[redacted]

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Petitioner,

against

CUNARD LINE, LIMITED, and OTHERS,

Defendants.

RECORD—VOLUME I

Testimony of Witnesses for the Petitioner.

UNITED STATES OF AMERICA

v.

PRINCE LINE, LIMITED, ET AL.

Record—Volume 1.

Testimony of Witnesses for the Petitioner.

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United States District Court,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Petitioner,

AGAINST

PRINCE LINE, LIMITED, PAUL F. GERHARD & COMPANY, HARRY CONNORS, PAUL GOTTHEIL, THOMAS A. SPARKS, WILLIAM VOLCKENS, H. W. VOLCKENS, W. L. WALTHER, ROBERT H. GOODWIN, CLEMENT H. BETTS, HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT, HAMBURG-SUDAMERIKANISCHE DAMPFSCHIFFAHRTS-GESELLSCHAFT, WILLIAM G. SICKEL, HENRY H. GARVAN, FREDERICK T. BUSK, LORENZO DANIELS, WILLIAM GEIN,
Defendants.

Before
Samuel M. Hitchcock, Esq.,
Special Examiner.
In Equity,
No. 9201.

NEW YORK, November 26, 1912.

APPEARANCES:

STANLEY D. MONTGOMERY, ESQ., CLARK MCKERCHER, ESQ., for the Petitioner.

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., Solicitors for defendants, Paul Gottheil, Thomas A. Sparks, William Volckens, H. W. Volckens, W. L. Walther, Robert H. Goodwin, Clement H. Betts, Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft, Hamburg-Sudamerikanische, Dampfschiffahrts-Gesellschaft, William G. Sickel, Henry H. Garvan.

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., Solicitors for defendants Prince Line, Limited, Paul F. Gerhard & Company, Harry Connors.

5 MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham, Esq., and Charles Burlingham, Esq., Solicitors for defendants Frederick T. Busk, Lorenzo Daniels, William Gein.

Hearing had pursuant to the order of the United States District Court for the Southern District of New York, dated the 23rd day of October, 1912, and of due notice of said hearing served on the solicitors for all defendants. Said order reads as follows:

6 At a Stated Term of the United States District Court for the Southern District of New York, held at the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 23rd day of October, 1912.

Present: HON. LEARNED HAND,
Judge.

7 UNITED STATES OF AMERICA, Petitioner, AGAINST PRINCE LINE, LIMITED, ET AL., Defendants.	In Equity, No. 9201.

ORDER FOR SPECIAL EXAMINER.

It appearing that the above entitled cause is at issue on
8 the petiton, answers and replications heretofore filed.

Now, upon motion of Henry A. Wise, Esq., United States Attorney, solicitor for the petitioner, it is

ORDERED that SAMUEL M. HITCHCOCK, Esq., of the City of New York and State of New York, be and he hereby is designated and appointed as Special Examiner to take and report to the Court the evidence offered by the petitioner and the defendants respectively, with full authority as such Special Examiner, according to the rules and practice in such case made and provided;

That said Examiner give notice by mail to counsel for

the respective parties of his appointment herein, and of 9
the time and place when and where he will attend for the purpose of hearing such testimony as may be adduced and that notice be given by the respective counsel or solicitors to the opposing counsel or solicitors by mail or personally of the time and place of the examination within such reasonable time as the Examiner may fix or order in such case.

The first hearing is not to be earlier than the fifteen day of November, 1912.

That the Examiner may, when necessary or convenient 10
for the respective parties, continue said hearings from time to time by order made and entered during any regularly appointed or noted hearing had hereunder;

That said Examiner may in his discretion when necessary or convenient for the respective parties or witnesses, hold such hearings and receive such testimony on behalf of any party at such times and at such places within or without the said Southern District of New York as he may designate and appoint by giving special notice to the respective parties or their solicitors, or by order made and entered at any regularly appointed or noted hearing 11
had hereunder; notice of such time and place of hearing also to be given by the respective counsel or the solicitors to the opposing counsel or solicitors or parties as provided by this order;

That all testimony adduced pursuant hereto may be taken in the usual manner under oath and when completed be reported by such Examiner together with all and several the proceedings had before him, to this Court, and filed with the Clerk thereof, in accordance with the rules and practice of this Court. 12

That the respective parties may from time to time agree as to the time and place for taking proof outside of the Southern District of New York, and may in case the Examiner herein appointed is unable by reason of illness or other cause, to attend at the time agreed upon by such agreement, select such Examiner for such examination. Whereupon such Examiner so selected shall as to such proof and the taking and reporting thereof have all the authority and powers herein given generally to said Samuel M. Hitchcock, Examiner, and the said Samuel M. Hitchcock shall act as Examiner aforesaid outside of the

13 Southern District of New York except where there is an agreement among the parties as in the cases provided in this paragraph.

The compensation to be paid said Examiner shall be at the rate of fifteen dollars ($15) per day when in active attendance at said hearing in the City of New York, and at the rate of twenty-five dollars ($25) per day when in active attendance at said hearings at any place outside of the limits of said City of New York, and when attending said hearings outside of said City of New York said Ex-
14 aminer shall have an allowance in addition to the above of six dollars ($6) per day in lieu of subsistence, together with his actual transportation expenses, said allowance to be made from the date of departure to date of return to said City of New York inclusive.

CHARLES P. HANSON of New York City is hereby appointed stenographer for taking and transcribing the testimony under the direction of said Examiner.

The aforesaid per diem allowances and expenses of said Examiner and said stenographer shall be shown by monthly accounts, accompanied by vouchers, submitted
15 for the approval of the attorneys or counsel for the petitioner and defendants and will be advanced by the party on whose behalf said testimony is taken, the total amount thereof to be taxed as costs in this action on the termination of the suit, provided the costs are awarded by the Court. A verified copy of such monthly accounts and vouchers as are furnished under the provisions of this paragraph will be filed by said Examiner and said stenographer in the office of the Clerk of said Court.

That the petitioner is allowed sixty days from the
16 fifteenth of November, 1912, or so much thereof as may be necessary, to complete the taking of the testimony in chief to be adduced in its behalf and the defendants are allowed sixty days from the date of closing of the plaintiff's testimony to complete the taking of the testimony to be adduced on their behalf and the Petitioner is allowed a further fifteen days from the date of the closing of defendant's testimony to complete the taking of the testimony to be adduced in rebuttal.

Dated, New York, October 23, 1912.

LEARNED HAND,
Judge.

Stipulation in regard to the signing of testimony by the witnesses. 17

It is hereby stipulated and agreed between all of the counsel for the respective parties that the witnesses need not sign the testimony but the minutes as taken by the stenographer be accepted by all the parties as a correct record of the case.

ROBERT GOODWIN, called on behalf of the Petitioner being first sworn, testified as follows: 18

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Goodwin, you are the Mr. Goodwin who is a defendant in this suit, Robert Goodwin? A. Yes, sir.

Q. You are a resident of New York City? A. Brooklyn, sir.

Q. What is your business? A. I am secretary.

Q. Secretary of what? A. Of the Brazilian Syndicate, or whatever they call it.

Q. And what is the Brazilian Syndicate? A. I really don't know what it is myself. 19

By Mr. McKercher:

Q. What do you call it? A. I don't know. I have never known whether it is a conference or what you call it.

By Mr. Montgomery:

Q. Is it a meeting or conference of the agents of some of the steamship lines engaged in traffic between the United States and Brazil? A. Yes, sir.

Q. How long have you acted as secretary? A. Seven years with the exception of one year. 20

Q. What year was that? A. I think it was—I am not quite sure, 1908, I think.

Q. Who was the secretary during the period that you were not acting as secretary? A. There was none.

Q. Where is your office? A. 326 Produce Exchange.

Q. What services do you perform for this conference? A. Well, sir, I send all cables and receive all cables.

Q. Send cables to whom? A. London.

Q. Do you carry on any correspondence? A. No, sir.

Q. Other than by cable? A. No, sir.

21 Q. Do you attend meetings? A. Yes, sir.

Q. And act as secretary in these meetings? A. Yes, sir.

Q. And keep the minutes? A. I write the minutes, yes, sir.

Q. What other duties have you as secretary? A. Well, nothing very much besides that.

Q. Nothing much—you have some other duties? A. Well, I typewrite the minutes and send cables—that is all. Those are my duties.

Q. How often does this conference meet? A. Once a
22 week.

Q. You are here in response to a subpoena *duces tecum* that was served upon you? A. Yes, sir.

Q. Calling upon you to bring certain documents? A. Yes, sir.

Q. The first paragraph of the subpoena calls for all minutes, copies of minutes and all memoranda relating to regular and special meetings of the conferences from January 1st to the date of the service of this subpoena. Have you succeeded in—have you brought all of those minutes for that period?

23

MR. SPOONER: That was January 1st when?

MR. MONTGOMERY: 1908.

THE WITNESS: Yes, sir.

MR. BURLINGHAM: That does not answer it. Say I have produced minutes as follows:

THE WITNESS: I have produced minutes as follows: From May 5, 1909, to May 25, 1910, June 8, 1910 to July 26, 1911, August 2, 1911 to November 12, 1912, and November 12 to date.

MR. BURLINGHAM: I understand Mr. Montgomery
24 the Government has minutes from July 29, 1908 to April 28, 1909—is that so?

MR. MONTGOMERY: The Government has some typewritten copies, I am not sure whether the typewritten copies were made by the Government or by some of the defendants. I think they were made by the Government and that the matter furnished to the Government by the defendants has been returned. The Government appears to have the book purporting to contain the minutes from December 5, 1906 to about August 1, 1907, and a book pur-

porting to contain minutes from July 29, 1908, to April 28, 1909.

MR. BURLINGHAM: Then all you want is from January, 1908, to July 29, 1908. In addition there seems to be a gap from August 1, 1907.

THE WITNESS: I think that is the year there was no secretary.

MR. KIRLIN: Maybe he has looked.

MR. BURLINGHAM: Ask him why he has not produced them.

By Mr. Montgomery:

Q. Where is the minute book from January 1, 1908 to July 29, 1908? A. July what?

Q. January, 1908 to July 29, 1908, I ask you where is the letter book for that period—the minute book I should say—for that period? A. There were no minutes kept during that period. I was absent that year.

Q. One year? A. Yes.

Q. Do you know whether there were meetings of the conference during that year—during that period? A. No, sir, I do not.

Q. These books contain all of the minutes that you have been able to find? A. Yes, sir—all there is. I don't think there are any more.

Q. As secretary of this conference do you ever receive, or have you ever received any minutes or copies of minutes or any memorandum relating to regular or special meetings of the conference at London, known as the Brazil conference of London? A. No, sir.

Q. Do you know what I mean by the Brazil conference of London? A. Well, all I know you mean, that is where my cables go.

Q. Yes, that is the conference composed of the principal —— A. I don't know—I know nothing about it.

Q. Of the lines you represent? A. I don't know about that.

Q. You have no copies of any minutes of that conference? A. No, sir.

Q. You never received any or had the custody of any as secretary of this conference? A. Well, I don't exactly understand what you mean.

Q. I am asking about the minutes of the conference at London? A. No, sir.

29 Q. The conference to which you send your cables? A. No, sir.

Q. You have never had the custody of any minutes of that conference or copies or memoranda of any minutes of meetings of that? A. No, sir.

Q. Do you know any one in New York who has received such copies of such minutes? A. No, sir.

Q. The third paragraph of this subpoena calls upon you to bring true copies of all cables sent by the secretary of the conference at London from February 1st, 1901, to the
30 date of the service of this subpoena.

MR. SPOONER: Which is the third.

MR. BURLINGHAM: Goodwin's subpoena—true copies, and so forth, from February 1st, 1901 to the date of the service of this subpoena.

By Mr. Montgomery:

Q. How far have you been able to comply with that? A. Well, sir, you have a book there—February 19, 1910, to July, 1911, July, 1911, to June 12, 1912, June 12, 1912,
31 to date.

By Mr. McKercher:

Q. Are there any books such as this prior to the date of the first one here which appears to begin February 16, 1910. Was that the initial date on which you started this sort of a record? A. I don't think——

Q. You have no book similar to this prior to February 16, 1910? A. I don't think so.

Q. In what sort of form are your cables prior to that
32 time? A. They have only one book if I remember right.

MR. BURLINGHAM: Have you, Mr. Montgomery book of cables between February 16, 1910, and May 6, 1911?

MR. MONTGOMERY: No, we have no book—we have a bunch of typewritten copies of cables; February 16, 1910 to May 6, 1911.

MR. BURLINGHAM: That supplements the other two that you have got—it supplements those two books.

MR. MONTGOMERY: No, it is contemporaneous with most of the period in this first book—February 16,

1910, to May 3, 1911, and the book is from February 16, 1910, to July 3, 1911. The book covers the period and a little more. 33

MR. KIRLIN: Then what you want are the cables from 1908 anterior to that. Have you got a book for that?

THE WITNESS: No.

By Mr. Montgomery:

Q. Mr. Goodwin, what search have you made for cables and copies of cables prior to February 16, 1910? 34

MR. BURLINGHAM: How far back do you mean—all the way, 1901.

MR. MONTGOMERY: Just let him answer the question as it is? A. Well, I have made as much search as I could in the time I have had. I have had the place all littered up since I got the subpoena.

By Mr. Montgomery:

Q. Have you ever since you have acted as secretary kept copies of cables in books similar to these that you have produced? A. No, sir, I don't remember. I was trying to remember myself. I have not, I don't think. I am not sure. 35

Q. Have you ever destroyed any copies of cables or any cables? A. No, sir.

Q. Have you ever given up the custody of any cables or any copies of cables? A. No, sir.

Q. Mr. Goodwin, these books that you have produced are copies of the cables received from London and copies of the replies sent to London? A. Yes, sir.

Q. And have you made these copies yourself? A. Yes, sir. 36

Q. They are in your own handwriting? A. Yes, sir.

Q. And they are true copies in each instance, as to each cable? A. Yes, sir.

Q. As to the cables received from London have you destroyed the originals as you entered them in these books or have the originals been kept? A. All kept.

Q. And filed by you? A. Yes, sir.

Q. During the entire period that you have been secretary? A. Yes, sir.

Q. Then all of the cables received from London are filed

37 here by you and are now in your custody? A. Ought to be, sir. I presume they are.

Q. Have you searched for the cables themselves as well as for these books containing copies since receiving this subpoena? A. I did as much as I could towards it. I may have others.

Q. As to the books you have produced do they contain all of the cables received from London by this conference here and all of the cables sent to London by this conference? A. Yes, sir.

38 MR. BURLINGHAM: During the periods.

By Mr. Montgomery:

Q. For the periods that the books purport to cover? A. Yes, sir.

Q. You have no reason to believe that both the original cables and the copies contained in these books for the remainder of the period asked for are still in your office? A. Well, you asked for 1901, didn't you?

Q. Yes.

39 MR. BURLINGHAM: 1901, yes.

A. I was not there, sir, until 1905 so I really don't know.

Q. Have you never had occasion to refer back to the period before you were there and to know whether your office contains any files of records before your time? A. No, sir, not that I remember. I may have.

Q. As secretary of this conference, do you have the custody of any contracts or agreements, any memoranda of agreements, entered into by the conference? A. Yes, sir,

40 contracts.

MR. BURLINGHAM: Now may I, before you interrogate upon that, may I raise the point that I think that clause of the subpoena is altogether too broad. You are asking for contracts and agreements, memoranda agreements entered into by any steamship company, or the agent of any steamship company represented in Brazil conference, relating to the carriage of freight between New York and Brazil between February 1, 1901, and the date of the service of the subpoena. For myself I certainly shall object to the introduction into evidence of con-

tracts made with steamship companies and with 41
merchants for a period of twelve years—eleven years and a half—and it certainly is not material or relevant to the issues of this case. I might as well make the objection now in the beginning. If I understand the request it is for all contracts for the shipment of cargo from New York during a period of eleven and a half years.

MR. MONTGOMERY: We will suspend that for the time.

MR. KIRLIN: Let me add my concurrence to that. 42
I object to the introduction of any contracts by the witness prior to the date of this agreement dated the 18th of February, 1908, the only allegation of the petition relative to my client being subsequent to that date.

MR. SPOONER: I make the same objection as to my client.

MR. MCKERCHER: By an understanding the witness is excused from answering the paragraph of the subpoena numbered "Second" beginning, "All 43
contracts," and ending, "subpoena also," subject to a conference between counsel on this particular paragraph, the witness to respond to the same at some other agreed date.

MR. MCKERCHER: It is understood that the witness will respond to the same subpoena without any other process.

JOSEPH PURCELL, called on behalf of the Petitioner being first sworn testified as follows: 44

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Purcell, where do you live? A. Brooklyn.

Q. What business are you engaged in? A. Importer.

Q. What kind of goods? A. Coffee.

Q. Coffee only? A. Only.

Q. With what firm are you connected? A. Hard & Rand.

Q. That is a firm, a copartnership? A. Yes, sir.

Q. Who are the members of the firm? A. Anson W. Hard, myself, Henry Forbes McCreary, J. W. Edmonds, John E. Johnson, Jr., and W. F. Hartranft.

45 Q. Are they all residents of New York? A. Anson W. Hard resides in Lawrence, L. I., Lawrence, L. I., is where he votes. Joseph Purcell, Brooklyn, H. F. McCreary is New York, J. W. Edmonds, New York, W. F. Hard is Jersey City, John E. Johnson, Jr., Rio Janeiro, Brazil.

Q. Do you import any coffee from Brazil? A. Yes.

Q. Where is your main office—the main office of your house? A. 107 Wall Street.

Q. What other offices have you? A. Chicago, St. Louis, New Orleans.

46 Q. New Orleans? A. That is, in the United States. Abroad: London, Batavia; Victoria, Brazil; Rio Janeiro, Brazil; Santos, Brazil and San Paulo, Brazil.

Q. To what ports does your company send coffee from Brazil? A. Numerous ports in Europe and in the United States. Do you want them enumerated?

Q. Yes, I think you had better name them? A. In the United States would be New Orleans and New York, sometimes Boston, not from Brazil though, no—cut Boston out. I am telling the ports shipping from Brazil to these ports. We only ship one way. Well, in Europe I would have a

47 hard time to give all the ports there—Southampton---

Q. Well, how many of them, approximately, all told about in Europe? A. I can give you some of the principal ones.

Q. Not actually, but approximately—two or three or a hundred? A. No, half a dozen might cover it.

Q. You cannot recall at this time? A. I can tell you some of them.

Q. Name those which you remember?

MR. SPOONER: He said Southampton.

48

A. Southampton, Havre, Hamburg, Amsterdam, Rotterdam, Trieste, Bremen, Fiume, Genoa, Christiana, Copenhagen, Liverpool, London.

Q. Do you make contracts for the carriage of your coffee from Brazil to the United States? A. Yes, we have made them.

Q. With whom are those contracts made? A. Well, the best way that I can answer that is to give you what you asked for in your subpoena. Those are all the contracts and agreements that we have got in our possession. They

date back to 1898. The contract of 1898 was in force in 49
1901. (Witness hands counsel certain contracts.)

THE EXAMINER: Handing the counsel the contracts.

THE WITNESS: They are copies of the contracts—they are not the originals.

Q. Where are the originals? A. In Brazil.

Q. In whose possession? A. In our firm's possession. These are true copies of them, because they were sent to us by our Brazil firm as true copies of the contracts and 50
from which we work.

Q. Are you sure, Mr. Purcell, that the copies of contracts which you have produced are copies of all the contracts which Hard & Rand have entered into during the period covered by the subpoena? A. Since I received your summons I handed it over to Mr. Waddell who is more familiar with all the details of our trade contracts than I am. I asked him to look up everything that you asked for. He came up, I think, to see you yesterday to see if he had to bring up a cartload of stuff, and I think you ar- 51
ranged it between yourselves. His instructions were to get everything you asked for.

By Mr. McKercher:

Q. As far as you know those are all the copies? A. It depends on Mr. Waddell.

By Mr. Montgomery:

Q. To get what was asked for—if you have any more, they will be forthcoming? A. Yes, sir.

Q. In addition to the contracts this subpoena asks for 52
all written or printed offers to pay rebates to shippers. Did you find any such offers in circular form or otherwise? A. The whole thing is there—the form for payment of rebates.

Q. And all that you found are here? A. All are there. All those papers have to do with the contracts and agreements and letters concerning them—modifications and additions.

Q. The subpoena calls for all letters written by Lamport & Holt or by Lamport & Holt, Limited, to your firm? A. Mr. Waddell had instructions to get those for you. He

53 will have to answer that question whether he has gotten them or not. I think Mr. Montgomery it would be very much better for you to let Mr. Waddell take the stand and let me go because he is more familiar with the details of that business. He attends to collecting rebates and sees that all parts of the contracts are carried out. You ask me a lot of questions——

By Mr. McKercher:

Q. We simply want to ask you whether you have pro-
54 duced these papers or whether or not they are in existence? A. He has attended to the collecting of all those papers. I hope he has got them all.

Q. He was directed by you to procure them? A. Directed by me to get every paper that you asked for.

Q. Mr. Waddell you know has more complete knowledge of the existence, character and identity of these papers than you have? A. He is our chief clerk. As soon as the contract is made then he carried out the provisions of the contract.

55

JAMES H. WADDELL, called on behalf of the Petitioner, being first sworn testified as follows:

By Mr. McKercher:

Q. Mr. Waddell, what is your business? A. Coffee importer.

Q. With whom are you in business? A. Hard & Rand.

Q. You heard Mr. Purcell's statement here that he had directed you to procure the papers for which call is made
56 in this subpoena? A. I did.

Q. Do you understand the terms of this subpoena? A. I do.

Q. Up to this time we had covered paragraph 1 in regard to the contracts—all papers indicated; you got those out of the files? A. Yes, sir.

Q. The fifth paragraph of this subpoena reads (Mr. McKercher reads paragraph 5). You are familiar with the paragraph. Have you got the letters? A. I have produced all the letters.

Q. Where are they? A. These are all the letters and correspondence (indicating), with Lamport & Holt. These

are from Lamport & Holt. As I told Mr. Montgomery I could not find the book before them. This runs up to November 24, 1905. 57

Q. These books begin November 24, 1905? A. Up to date.

Q. And the book prior to that you have been unable to find? A. I have been unable to find it.

Q. You will search for it and produce it later on? A. Yes, sir.

Q. The last special paragraph of this subpoena reads (Mr. McKercher reads last paragraph of subpoena): You are familiar with that paragraph? A. Yes, sir I have produced our ledger prior to the one covered by the one now in our office. 58

Q. Show us that.

MR. KIRLIN: What date do those cover?

THE WITNESS: From May, 1909, to April, 1912.

Q. You have similar ledgers prior to that time? A. Yes, sir.

Q. According to the arrangement made, we arranged to dispense with producing them and left it this way. The understanding was that they would be placed in the custody of the Commissioner to be retained in your office and to be examined at any time—to use at our convenience. 59

MR. KIRLIN: What is this ledger, ledger of what?

By Mr. McKercher:

Q. What is that? A. This ledger shows the rebates account, the account in which all rebates received by us have been credited. Mr. Montgomery also asked us to bring down what we also call our freight account. 60

Q. That second book is what? A. It covers a period of four years, from 1907 to 1911. It covers the freight account. All freight we pay out is charged up in here.

Q. Mr. Waddell, you bring all these contracts in response to the subpoena—contracts with Lamport & Holt. It is confined to contracts with Lamport & Holt with any of the conference lines.

MR. KIRLIN: I would ask on account of Mr. Gerhard's health that he be not served with process in this proceeding. If the representatives of the Gov-

61 ernment will notify me at any time what they want him to produce, I will see that he comes and conforms in all respects as he would if he had been actually served.

MR. MCKERCHER: We now hand you a copy of the subpoena.

Hearing adjourned to Friday, November 29, at 11 o'clock, Room 441, Custom House Building.

62 NEW YORK, November 29, 1912.

After a conference of counsel present, the hearing was adjourned until Wednesday, December 11th, 1912, at 11 o'clock A. M.

NEW YORK, December 12, 1912.

APPEARANCES:

JOHN W. H. CRIM, ESQ., STANLEY D. MONTGOMERY, ESQ., for the Petitioner.

63 Other appearances same as before.

MR. CRIM: Mr. Burlingham, about your new defendant.

MR. BURLINGHAM: I am ready to sign that stipulation, only I don't want to answer in four days.

MR. SPOONER: Who is the new defendant?

MR. BURLINGHAM: Lamport & Holt, Limited.

MR. CRIM: The Government has amended its complaint with reference to Lamport & Holt. It seems that the Government thought that it was a copartnership during all the period of time alleged in the complaint, or the petition: 64 now, it appears that they were incorporated during that period of time. How many days do you want to answer?

MR. BURLINGHAM: The usual twenty days.

MR. CRIM: All right.

THOMAS A. SPARKS, called on behalf of the Petitioner, being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Crim:

Q. Mr. Sparks, you were subpoenaed to produce an agreement entitled "Memorandum of Agreement" dated Febru-

ary 14th, 1908, which is Exhibit No. 1 in the petition; have 65
you produced that agreement? A. I haven't got it.

Q. Have you a copy of it? A. Yes, sir.

Q. Will you produce the copy? A. I have given you the copy. You have the copy of one; I don't think I have another copy. I may have in the office.

MR. BURLINGHAM: We will admit that the one attached to the petition is correct. I believe there is one slight error in it.

MR. KIRLIN: I have forgotten what it is, but it is unimportant. 66

Q. You were subpoenaed to produce the letter to Funch, Edye & Company, transmitting the agreement; do you produce that letter? A. No, there was no agreement and therefore there was no letter.

Q. The copy of agreement? A. I don't know how we can deliver that; we did not get it by mail. This is all in antiquity. I don't know where we got it from.

MR. SPOONER: Then there was no letter transmitted? 67

THE WITNESS: Not to us.

MR. SPOONER: You have none?

THE WITNESS: No, sir.

Q. Do you know how you came into possession of this copy? A. I think we got it from the Hamburg-American Line, New York office.

Q. And do you recall what individual? A. No; probably Mr. Sickel.

Q. Now it appears— 68

MR. SPOONER: Do you mean the Hamburg-American or the Hamburg-South American?

THE WITNESS: Hamburg-American Line.

Q. Now, it appears that there was a certain itinerary with regard to the requirements of the various ports contemplated in this agreement; do you recall such a provision? A. Yes, I remember it.

Q. Was there an itinerary? A. I guess there was, but I haven't got it. I think as a matter of fact that all these steamers went to all the ports. That was probably the itinerary to begin with.

69 Q. All of what steamers; all the steamers of the defendant lines? A. Yes.

Q. Went to all the ports in South America, that is, in Brazil? A. Probably, yes.

Q. And to New Orleans and New York? A. I don't know about New Orleans. I am only talking about the New York line.

Q. You have not seen any paper entitled an itinerary or in the nature of an itinerary? A. No.

Q. You were subpoenaed to produce the original tariff of
70 rates, provision for which is made in paragraph two of the agreement set forth in the petition? A. As near as I have been able to look that up, that is the original tariff under which we were working at the time (producing paper), and it was supplemented by this list of rates on staple articles, and by various changes from time to time practically daily.

Q. When did this tariff become effective? A. I have no idea; long before my time.

Q. And it is in effect to-day? A. No.

Q. With the schedules of amendments that you produce? A. No. There is another tariff in effect to-day.

71 Q. And these are all of the amendments to this original tariff? A. Not by any manner of means; there are hundreds of amendments.

Brazilian tariff marked Exhibit 1 for identification.

Amendment to Brazilian tariff marked Exhibit 2 for identification.

Q. You were subpoenaed to produce the subsequent schedules? A. That is the present tariff. (Producing.)

72 Q. And when did this tariff become effective, the printed sheets? A. I think about the beginning of this year. Do you know about that? (Addressing Mr. Goodwin.)

MR. GOODWIN: About that, Mr. Sparks.

A. About the beginning of this year.

Q. I observe it has March 12th printed on the first page? A. That is no doubt the date.

Q. And are these rates in effect at this time? A. A great number of those have been changed to-day and we are having a new tariff printed now, I believe, so as to take

up all those various alterations that have been made since March. 73

Q. When did this recent revision begin? A. From day to day ever since the tariff was printed.

New tariff sheets marked Exhibit 3 for identification.

Q. You were subpoenaed to produce the agreement of July 8th, 1908, which agreement is specified as a copy of what is, I presume, exhibit 2 in the petition? A. Which paragraph are you about now, six or eight? 74

Q. Eight.

MR. SPOONER: That is the pooling agreement?

THE WITNESS: Yes, I haven't got the original.

Q. Have you a copy? A. I gave a copy to you; I don't think I have another. I may have. I only presume that is correct. It was sent to us by people on the other side.

Q. Is this the copy that you produced for the Government? (Showing.) A. I do not recognize it, but I think that is the agreement. I don't think that was ever made in our office; it does not look like any of our typewriting. That is the one I gave you, I think. (Indicating another handed to him by Mr. Crim.) This is the one I gave you. 75

Q. From whom did you receive that? A. I think the Hamburg American Line. I really do not know.

Q. I understood you to say a moment ago it came to you from the other side? A. Well, that was where it was made, you know.

Q. This is the agreement that you used, is it not, with respect to your business? A. Yes. 76

Q. And this is the agreement that you took from your files to the District Attorney? A. Yes, sir.

Agreement marked Exhibit 4 for identification.

MR. SPOONER: Was that delivered at the Grand Jury investigation?

THE WITNESS: Yes, sir.

Q. You were subpoenaed to produce agreement made in 1909 or 1910 between the proprietors of the Lamport & Holt Line and the Prince Line, Hamburg American and

77 Hamburg South American Line? A. This is paragraph six?

Q. Paragraph six of the subpoena? A. I haven't got it.

Q. Have you ever had one in your possession? A. No, sir

Q. Copy? A. No.

Q. Do you know whether there is such an agreement? A. I don't think there is.

Q. You were subpoenaed to produce the schedule or schedules of rates with respect to steerage passengers? A.
78 Yes. Well, the only one we have is pasted in the front leaf of the first tariff I gave you. As far as I know we have nothing whatever to do with booking of passengers. I was not connected with the line then, but I believe the passenger business has always been handled by the Hamburg American Line. I may say, Mr. Crim, that we have not carried passengers from any—

Q. You refer to memoranda pasted on the first page of the book entitled "Brazil Tariff"? A. Yes, I saw it for the first time this morning.

79 Q. I understand you to say that your line does not transport any passengers at all? A. Not at the present time.

Q. When did it discontinue that service? A. I think in 1908 or 1909.

Q. And which of the Hamburg lines do you refer to in this respect, any particular one or both? A. I do not quite understand in what respect?

Q. Just a moment; I understand you to say that neither of the Hamburg lines carry passengers? A. Yes.

Q. And neither of them have carried passengers since
80 1908 or 1909? A. Yes; to the best of my knowledge and belief there have been none.

Q. Now, previous to 1908 and 1909 did both of these lines carry passengers? A. I think so.

Q. You were subpoenaed to produce the minutes of the New York conference or Committee from January 1st, 1909 to July 29th, 1908? A. Yes; is that what you meant?

Q. Yes? A. I think you meant January 1st, 1908?

Q. I think it is a clerical error, yes. That is not a very intelligent paragraph I will admit. Have you produced any previous to July 29th, 1908? A. No.

Q. Were there any minutes taken previous to July 29th,

1908? A. No. I will amend that answer and say not as 81
far as I know.

Q. You attended the meetings of that conference? A. Yes; there were no meetings at that time.

MR. SPOONER: Then there could not be any minutes.

THE WITNESS: Unless there were some records kept; I don't know.

Q. When did you commence to attend meetings of the New York conference with regard to Brazil business? A. 82
Do you mean personally; when did I commence?

Q. Yes. A. Sometime in 1908 I believe.

Q. You never attended any meetings of any conference or committee with respect to Brazil business previous to that time? A. No.

Q. You were subpoenaed to produce the statement of the secretary of said New York Committee submitted to the representative of the Hamburg Line from January 1st, 1908 to the present time? A. I don't know just what you mean by that; I cannot find any monthly statement. 83

Q. I call your attenton to Exhibit No. 2 in the petition, paragraph No. 7, entitled "Syndicate office in New York" and "The secretary to make up a monthly statement regarding all sailings of the Syndicate lines in each month, showing the percentages of tonnage carried, freight earned, and amount contributed to the Pool by each of the lines?" A. Well, Mr. Goodwin may have rendered those statements; I cannot find them. I have got an annual one here which you ask for in the next paragraph, and it may be that monthly statement is in the minutes somewhere as 84
an individual paragraph in the minutes, and I have overlooked it.

Q. Did you look through the minutes to ascertain? A. Yes; I looked through them, a batch that high, yesterday. (Indicating.)

Q. And you found no report that the secretary made,— A. No.

Q. Purporting to be monthly reports? A. No.

Q. Have you produced the annual reports of the secretary? A. Yes; all I have got. (Producing.)

Marked Exhibit No. 5 for identification.

85 Q. You say you have produced all of them; have you had any others than these you produce? A. Not that I can find.

Q. Have you had any in your possession that you now cannot find and do not produce? A. Not that I know of.

Q. Now, you were subpoenaed to produce memoranda with rates of freight and staples dated July 31, 1908? A. Well, that is included with the tariff I have given you.

Q. What particular tariff, Mr. Sparks? A. I think that is the one; that top one. (Witness refers to part of Ex-
86 hibit No. 2, dated New York, July 31, 1908.)

Q. And the page following? A. No, I think not. What is that? May I see it again? (After examination.) Yes.

Q. You were subpoenaed to produce under paragraph fourteen of the subpoena contracts with certain shippers, have you the contracts with Hasencleaver & Company? A. No, sir.

Q. Has your concern had a contract with them? A. I think not.

Q. Barbour Asphalt Paving Company? A. I haven't got that contract either, because we did not make it. It
87 was made by one of the other lines.

Q. Baldwin Locomotive Works? A. That was made by one of the other lines, too.

Q. General Electric Company? A. Yes, I have that.

Marked Exhibit No. 8 for identification.

Q. J. Roebling Sons Company? A. I cannot find that one. I thought we had it too, but it is not on here. I don't seem to have that. Perhaps we did not make it after all, although I thought we did.

88 Q. Allerton D. Hitch? A. Yes. (Producing.)

(This is also indicated on exhibit No. 8.)

Marked Exhibit No. 9 for identification.

Q. Thompson & Company? A. Yes. (Producing.)

(This is covered by Exhibit No. 8.)

Q. Bahia Light & Power Company (Rodney D. Chipps)? A. Yes, I have several contracts with Chipps here.

Marked Exhibit No. 10 for identification.

Q. Singer Sewing Machine Company? A. Yes. (In- 89
dicated as part of exhibit No. 10.)

Q. Parsons Trading Company? A. No. I expect that was made by one of the other lines.

MR. SPOONER: You haven't it?

THE WITNESS: I haven't it.

Q. H. W. Peabody & Company? A. No.

Q. You find no record of any contract with them on your books? A. No.

Q. Elmenhorst & Company? A. No. 90

Q. National Cash Register Company? A. No.

Q. Union Carbide Company? A. Yes. (Indicated on exhibits eight and ten.)

Q. Burnham-Williams & Company? A. No.

Q. W. P. Plummer (Rio de Janeiro Light & Power Company, San Paulo Light & Power Company)? A. No.

Q. G. D. Kuper & Brother? A. No.

Q. G. Amsinck & Company? A. No.

Q. Guinle & Company? A. No.

Q. Laurentide Paper Company? A. Yes. (Indicated on 91
exhibit No. 10.)

Q. United States Steel Products Exporting Company? A. No.

Q. Now, you have produced all of the contracts between your lines and those concerns which you have found any record of? A. Yes, that we have made.

Q. I understand, however, from what you have stated, that your lines are parties to contracts that have been made by other lines? A. Oh, yes.

Q. What is your business, Mr. Sparks? A. Ship broker.

Q. How long have you been a ship broker? A. Since 92
1907.

Q. What lines are you a ship broker for? A. Do you want them all? I will send you over a printed list of them. I haven't them all in my head.

Q. Do you represent as ship broker the Hamburg-American Line? A. Yes.

Q. Hamburg South American Line? A. Yes.

Q. What is the name of your firm? A. Funch, Edye & Company.

Q. Where is its principal office? A. New York.

93 Q. Is it a co-partnership or a corporation or what? A. Co-partnership.

Q. Incorporated under the laws of New York? A. Not incorporated.

Q. And who are the members of that co-partnership? A. Paul Gotthiel, William Volckens, W. L. Walther, H. W. Volckens and myself.

Q. How long has this concern of Funch, Edye & Company been identified with the Hamburg Lines you have mentioned? A. In the Brazil trade since 1907.

94 Q. And with respect to other trade how long? A. Well, with the Hamburg-American Line for a great many years; I don't know how many.

Q. During all the time that you have been with that concern? A. Oh, yes; that is only 1907; a great many years before that.

Q. What was your business before you became a member of this concern of Funch, Edye & Company? A. I was the agent for a China and Japan House and secretary and treasurer of the American Asiatic Steamship Company.

Q. Do you know Robert H. Goodwin? A. Yes.

95 Q. Has he any identification with the Hamburg Lines? A. He is employed by our firm.

Q. Do you know Clement H. Betts? A. Yes.

Q. Has he any identification with your firm? A. He is employed by our firm also.

Q. Do you know Henry H. Garvan? A. Yes.

Q. Is he identified with your firm? A. No, he is employed by the Hamburg American Line.

Q. How long have Messrs. Goodwin, Betts, and Garvan been employed by your concern generally, not definitely?

96 A. I cannot answer for Mr. Garvan; he is not employed by our firm. I think Mr. Betts approximately eight or ten years and Mr. Goodwin about fifteen years.

Q. Do you know William G. Sickel? A. I do.

Q. Is he identified with the Hamburg American Line? A. Yes.

Q. You have had transactions with him? A. Yes, sir.

Q. He purporting to represent the Hamburg American? A. Yes.

Q. And you Funch, Edye & Company? A. Yes.

Q. Now, as ship brokers representing the Hamburg American Lines which we have mentioned, what function

does the firm of Funch, Edye & Company perform; describe 97
their relations with these lines briefly? We solicit the freight with which the ships are loaded in New York.

Q. Do you do anything more than solicit? A. We book it if we can.

Q. Contract for the transportation of freight? A. Right.

Q. From the port of New York to ports in Brazil? A. Yes.

Q. Do you have anything to do with freight coming into the port of New York from points in Brazil over these lines? A. We collect the manifest rates and distribute the 98
cargo.

Q. Are you the general agent of the Hamburg Line in this trade in New York? A. General freight agent.

Q. And have been since the Hamburg American Line entered this trade? A. Since 1907.

Q. And have you any particular territory in the United States or Canada in which your jurisdiction as general freight agent extends? A. Well, it extends to everything carried by the line irrespective of where it comes from.

Q. Have you any sub-agents in the United States or em- 99
ployes at other points who are engaged in soliciting freight? A. Yes, we have an agent in Chicago.

Q. What is his name? A. Donovan, D. J. Donovan.

Q. How long has he been engaged in your concern there? A. He was there when I came there.

Q. Have you any other agents? A. No.

Q. Or employes at other points? A. No.

Q. The Hamburg American Line has agents at other ports, has it not? A. Yes.

Q. Have you any jurisdiction over those agents? A. No, 100
except in the case of the United States Shipping Company at Virginiaport; we manage that company.

Q. What is its business? A. Freight contractors for West India business.

Q. Has nothing to do with the Brazil business? A. Nothing whatever.

Q. What are the commodities, the principal commodities, you have taken orders for transportation to Brazil during the time that you have been identified with them? A. Kerosene, oil, resin, steel, machinery, cars and locomotives, general merchandise.

101 Q. What have been the principal commodities imported from Brazil to this country? A. Principally coffee, I think.

Q. Any lumber? A. Yes, some.

Q. How is the balance of trade between New York and Brazil, in which favor is it? A. It is much larger southbound.

Q. Very much more going out than coming in? A. Yes.

Q. Do you mean as to this balance of freight as to tonnage or as to value? A. I don't know anything about the value; I am talking about tonnage.

102 Q. Can you give us the approximate tonnage on that that the Hamburg lines import annually? A. I have no idea.

Q. Or they transport annually? A. I have no idea.

Q. It is a very large tonnage, isn't it? A. A very small tonnage.

Q. Nevertheless, what percentage of the entire total brought to this country from South America? A. I have no idea.

Q. You could not say whether it was one per cent. or seventy-five per cent? A. No, except that I know it is not seventy-five per cent.

103

MR. SPOONER: Do you know it is one per cent?

THE WITNESS: I don't know; I should think it is, but I really know nothing about it.

Q. Now then, does Funch, Edye & Company represent any other lines engaged in trade between New York and Brazil? A. No, sir.

Q. And has not been at any time during the five years last past agent or representative of any line other than the two Hamburg lines? A. No.

104 Q. Will you give me the names of steamship lines that are engaged in the trade between New York and ports in Brazil? A. Lloyd Brazileiro, Lamport & Holt Line, Prince Line and the Hamburg Line.

Q. And has there been any other lines during the past five years? A. There have been sporadic loadings. I would hardly call them lines, and then, of course, a very large tramp movement.

Q. And you speak of sporadic loadings what instances or occurrances do you refer to? A. A Philadelphia firm named Hagar loaded a few boats and a Brazilian firm resident in Rio has loaded a boat two or three times.

Q. Have you anything to do, or your concern, with the 105
business of the Hamburg lines at the port of New Orleans? A. No, nothing.

Q. Who represents the Hamburg lines at that port, if you know? A. I think they have their own office.

Q. Now, Mr. Sparks, I want to direct your attention to Exhibit No. 1 in the petition—referring to Exhibit 1 in the petition, paragraph one, and under the title "Outwards" I call your attention to this provision: "The Hamburg Lines combined, twenty-four sailings per annum." Has the Hamburg-American Line operated its outward sailings in con- 106
formity to that provision? A. Well, they have never had any more than twenty-four sailings per annum. I don't know if they have ever had as many.

Q. It was part of your duty to see to it that their outward sailings were confined to this provision? A. We had nothing to do with the sailings; they furnished us ships and we loaded them.

Q. Where did you get your directions from with regard to ships? A. From the Hamburg-American Line office here.

Q. How did they advise you or give you information with regard to their vessels? A. Either verbally or by let- 107
ter; I don't know.

Q. Has it been the course of trade for them to advise you from time to time when a vessel would reach port and when the vessel would depart from the port? A. Yes.

Q. You have had occasion to examine this agreement, have you not, of 1908? A. Since last winter, yes; very frequently.

Q. And did you have occasion to examine it previous to last winter? A. I don't think I have seen it for years until the District Attorney called for it. 108

Q. You were generally familiar with the provisions, weren't you? A. Yes, as far as it was necessary. It is not really nesessary for us to know much about a thing like this to perform our duties.

Q. When did you first learn of this agreement, or receive information with regard to this agreement? A. I can't remember. I have no idea at all.

Q. Do you recall receiving a copy of Exhibit No. 2 in the petition? A. Yes, I got that last winter, I think. No, wait a minute, it was Exhibit 1 I got last winter. Exhibit 2, I don't know. I probably had it in the office for years and never saw it

109 Q. You were generally familiar with its provisions, weren't you? A. To some extent, yes.

Q. In paragraph two of Exhibit 1, a pooling agreement is referred to. Is your understanding that Exhibit No. 2 is the paper referred to? A. Yes, sir.

Q. It says a tariff of rates from New York to be drawn up and strictly adhered to without any modification. Did you at any time receive information of a tariff rate that was to be strictly adhered to? A. I don't remember. It is a very long time ago and I was not handling Brazil business at the
110 time this agreement was made.

Q. Who was handling it? A. Mr. Gottheil, my partner.

Q. You knew enough about the business at that time to know that you were to adhere to some schedule rates, did you not? A. It is rather difficult to remember, Mr. Crim; it is five years ago, and I don't remember just what month I took hold of the Brazil business; it is sometime in that year.

Q. Has there been any time since you have been identified with Funch, Edye & Company that you have not adhered to a fixed schedule of rates? A. No.

111 Q. At all times you have adhered to some fixed schedule of rates? A. At all times, yes. I beg your pardon, not in 1907. Did you say since I have been identified with the Brazil business or since I have been with Funch, Edye & Company?

Q. Since you have been with Funch, Edye & Company? A. There were no fixed schedule rates as far as I remember in 1907 and 1908.

Q. What part of the years 1907-8 were there no fixed schedules? A. I imagine up to about the spring of 1907
112 to the spring of 1908.

Q. Did your company make the rate in regard to Brazilian business it thought necessary? A. I don't remember what the method was; I was not handling the business then.

Q. What information did you receive with regard to rates during that period? A. I do not really remember, Mr. Crim. My recollection is that there was a fight on and I suppose we took anything that we could get.

Q. A fight on with regard to Brazil business? A. Yes.

Q. And between whom was that fight? A. Everybody engaged in it.

Q. That is, the two Hamburg Lines, Lamport & Holt, 113
Prince Line? A. Yes.

Q. And the Brazil Line, Lloyd Brazileiro? A. Yes, I think they were running then.

Q. As a matter of fact the competition between the lines at that time was very serious, was it? A. Yes, sir.

Q. And rates of freight became much lower than they had been for a period of years? A. I did not know what they were before; I was not acquainted with the business at all.

Q. You don't know whether they went up or down during 114
this period of competition that you speak of? A. The inference is that they went down; I imagine they did.

Q. Don't you know that they did? A. How would I know? I don't know what the rate was before.

Q. They were lower during that period than they now are?

MR. SPOONER: Are you treating him as an adverse witness?

MR. CRIM: I have not decided whether I will treat him as an adverse witness myself; there are 115
some facts that I want to obtain that I am going to get from him.

MR. SPOONER: Without regard to the rules of evidence?

MR. CRIM: Without regard to whether he is an adverse witness or a friendly witness in my mind.

MR. SPOONER: Or the rules of evidence?

MR. CRIM: No, I won't admit I am disregarding all the rules of evidence.

MR. SPOONER: I didn't say all of them.

MR. KIRLIN: How is this material, Mr. Crim, 116
under the petition before 1908; there is no allegation in the petition prior to 1908?

MR. CRIM: That is very true, but if I show previous to 1908 there was active competition in this trade and that in 1908 it stopped.

MR. KIRLIN: I don't see how that helps the case any; there is no allegation about it.

MR. CRIM: We don't have to prove it.

MR. KIRLIN: We reserve a general objection to all enquiries prior to the date of this agreement as to facts the subject matter of this suit, as immate-

117 rial and irrelevant and not within the issues, and may it be understood that objection applies without repetition to this whole line of evidence?

MR. CRIM: Yes.

Q. (Question read.) A. I imagine so, yes.

Q. Will you tell me, if you know, what is meant in paragraph three of exhibit 1 about re-establishment of the deferred rebate system? A. I suppose they were trying to decide in their own minds whether to re-establish the de-
118 ferred rebate system.

Q. Had there at any time been a rebate system in operation in this traffic between New York and Brazil? A. I believe so, but I have no knowledge of it. It is before my time.

Q. Information that you have received [illegible] have received from members of your firm? A. [illegible] suppose I have heard it spoken of, yes.

Q. What is your understanding of a [illegible]; what is it? A. Well, it is a refund of a [illegible] of the
119 freight that the shipper has paid for transportation of his goods.

Q. Do you know of any rebate system now in effect with regard to the Hamburg-American Line? A. From New York to Brazil, you mean?

Q. Yes? A. No.

Q. Do you know of any rebate system in effect in regard to the Hamburg Lines from Brazil to New York?

MR. SPOONER: That is objected to as incompetent.

A. I have heard such a thing.

120 Q.. And from whom did you hear it? A. From the District Attorney, I believe.

MR. SPOONER: That is objected to as hearsay.

Q. Did you hear it from anybody else? A. I believe not.

Q. In paragraph four of Exhibit 1, "From the first of July, 1908, the departure of the Hamburg Lines from Brazil ports to New York shall not exceed twenty-four steamers per annum, and those of the Prince Line twenty-four steamers per annum to New York and twelve steamers per annum to New Orleans. Messrs. Lam-

port & Holt only to be at liberty to dispatch such number 121
of steamers as may suit their convenience. Hamburg Lines to devote their services to New Orleans, the trade to that port to be maintained only by the steamers of Messrs. Lamport & Holt and the Prince Line." Had the Hamburg Lines been engaged in the trade between Brazil and New Orleans previous to 1908? A. I think they did run a few steamers to New Orleans, yes.

Q. And did those steamers ship from New Orleans direct to Brazil? A. No.

Q. What was the course of the steamers on that line, New 122
Orleans-Brazil? A. I will only speak from hearsay, because I had nothing to do with it, but they came to New York to load—back again.

Q. And during what period of time was that the course with respect to the Hamburg Line? A. It must have been somewhere between the spring of 1907 and the spring of 1908.

Q. For about a year? A. Yes.

Q. And did all of the Hamburg vessels that came to New York stop at New Orleans on the way? A. I imagine not. 123
I have no idea, but I imagine not.

MR. SPOONER: Never mind imagining; if you don't know say so.

Q. Your understanding is that there were two services between Brazil and New York with regard to some of the steamers on those lines? A. Yes, I think so.

Q. And with other steamers they came to New Orleans and then on to New York? A. Yes, sir, I think so.

Q. Do you know about how many were engaged in the di- 124
rect service? A. I have no idea.

Q. Have the Hamburg American Lines put on any new steamers between the United States and Brazil since 1908? A. Yes, some.

Q. How many? A. I don't know; two or three perhaps.

Q. You have not heard then and don't know of any Hamburg steamer being at New Orleans from Brazil since 1908? A. Not that I know of.

Q. You would know it if it were? Not necessarily; we have nothing whatever to do with that.

Q. Do you know of any change in the coffee rate in 1908

125 so far as your lines were concerned? A. I have no knowledge whatever of coffee rates; don't know anything about them.

Q. Now, let's see; it was part of your duty to collect the freight, wasn't it, on shipments from Brazil to New York? A. Yes.

Q. How can you collect the freight unless you know what your rate is? A. We employ a qualified gentleman to send out the necessary bills; it is purely office boy work.

Q. Who is he? A. Mr. Bull.

126 Q. What is his first name? A. I don't know.

Q. He is an employe of your office? A. Yes.

Q. And it has been his business to do this a number of years? A. Yes, a great many years.

Q. Has your concern, Funch, Edye & Company, or the lines, insofar as you know, allowed any discounts or rebates to the consignees of coffee here? A. Funch, Edye & Company have not.

Q. What is your knowledge with regard to the Hamburg Line?

127 MR. BURLINGHAM: Will you make that more definite and state the dates?

Q. Yes. During the period from February 14th, 1908, to the present time. A. I have no knowledge of what the Hamburg Line may have done.

Q. Now, I ask you the same question with regard to other commodities; has Funch, Edye & Company allowed any discounts or rebates to consignees on commodities other than coffee since February 14th, 1908? A. No.

128 Q. Now, calling your attention to paragraph seven of Exhibit 1 of the petition, can you tell us whether the Hamburg Lines have entered into any new field of trade since February 14th, 1908; that is, established steamship lines or transported freight and property at any other point? A. I would like very much to answer you, and hate to have to say I don't know all the time, but you ask me questions that really do not concern me. I have nothing to do with them. I have nothing to do with the Hamburg-American Line except to solicit freight for their steamers in certain ports and that I do to the best of my ability.

Q. Simply say you don't know? A. Well, I don't know.

Q. You have read this agreement and are generally famil-

iar with its provisions; are you able to tell us whether your 129
concern has carried them out?

MR. SPOONER: What agreements?
MR. CRIM: Exhibit No. 1 in the petition.

Q. Insofar as concerns the business of Funch, Edye & Company? A. Yes, there is practically nothing in there that does concern the business of Funch, Edye & Company; it is entirely a principal's agreement.

Q. Now, turning our attention to Exhibit No. 2 in the petition, paragraph three, can you tell us what is meant in 130
the steamship business by a carrying rate? A. That is the allowance made to the steamers for carrying the cargo from point of loading to point of destination.

Q. Can you explain your definition a little further; that does not convey to me a very clear idea of just what a carrying rate is after all. It is an allowance for steamers, you say? A. Yes, as distinguished from the cost of putting the cargo on board and taking it off.

Q. And what is meant by the reception charges in your trade? A. I suppose wharfage and other incidental charges 131
to the loading of a ship.

Q. What other charges would there be besides wharfage and at the port of New York? A. Tallying, watching and so forth.

Q. Now, on the next page, the top of page 26 of the petition, I find in regard to the first port Cabedello landed dollar; what is meant there by "landed dollar"? A. That is the allowance made if the cargo has to be put on the wharf at Cabedello.

Q. And what is meant by the letters "f.f.a."? A. Free from aloneside. 132

Q. That is, where the cargo is delivered to a lighter or something? A. It is where the consignee goes for it to the side of the ship.

Q. And that "f.f.a." means that where the vessel or ship lands the cargo at its side? A. The landed rate is where the steamer undertakes to put it on the wharf; the "f.f.a." rate is where the consignee sends alongside the steamer for his goods.

Q. And who does the physical taking from the steamer, the shipper or the steamer? A. The steamer discharges it from her own rail.

133 Q. What is meant by an ad valorem cargo? A. When the rate of freight is charged on the value of the cargo instead of on the ton basis.

Q. And a little further down I see intermediate freight; what is intermediate freight? A. Cargo carried between ports visited en route.

Q. And what is meant by "owners' own account"? A. That means that it did not go into the pool.

Q. Now, I find in paragraph four "agents' commission pool"; are you familiar with what the loading commission
134 has been here at New York? A. Oh, yes.

Q. For the past four years, since 1908? A. Five per cent. as far as our line is concerned.

Q. And what was it previous to 1908? A. I don't know.

MR. BURLINGHAM: You mean generally, or in the Brazil trade?

MR. CRIM: In the Brazil trade?

A. I don't know; I presume five per cent., too.

Q. Has your line received this commission during the
135 past—1908? A. Five per cent.

Q. Yes? A. Yes.

Q. And from what source has it received it? A. We take it from the freight list.

Q. From the Hamburg-American Line? A. Yes.

MR. SPOONER: Where you said Line, you mean the firm, didn't you?

MR. CRIM: Yes.

Q. Has there been any pool with regard to it during
136 1908?

MR. BURLINGHAM: Pool with regard to what?

MR. CRIM: The rate of commission?

A. The principals provide in their agreement that the agents shall pool their commission. The statement was made up up to the present time and that has not been adjusted.

Q. That is, it has not been adjusted in the sense that you have not received your compensation? A. I mean that the line that owed money to the agents' pool has not paid it. I mean the firm that owed money to the agents' pool has not paid it.

Q. What is that firm? A. They were Busk & Jevons 137
then, and Busk & Daniels now.

Q. Is it your understanding of this provision that on all loading with reference to the agreement of February 14th and July 8th, there was to be deducted from the lines carrying that freight five per cent. and that it be apportioned among a certain number of agents? A. Well, I think the paragraph four says the same thing, only perhaps in more concise words.

Q. How were the agents to share? A. It says here equal proportion. 138

Q. And who were the agents that were to share in this? A. Busk & Jevons, Gerhard and Funch, Edye & Company.

Q. Three? A. Yes.

Q. Do you recall what amount Funch, Edye & Company made claim for? A. You mean the adjustment?

Q. Yes? A. I think about $1400.

Q. And this commission is commission in addition to soliciting the freight? A. No, that was our payment for soliciting the freight.

Q. And do you receive any other consideration for soliciting freight for the Hamburg lines? A. No. 139

Q. Do you receive any consideration from the shippers who ship over the Hamburg Lines? A. No.

MR. SPOONER: Do they pay you for soliciting them?
THE WITNESS: Not very often.

Q. Under paragraph five, the above proportions of the pool are based upon a minimum of one sailing for each party per month, *force majeure* excepted; by *force majeure* you mean the act of God? A. That is one of them, yes.

Q. Did the sailings of the Hamburg Lines conform to 140
this from 1908 to 1909? A. Yes, I think they were never less than one a month, and never more than two.

Q. And since 1909? A. The same thing.

Q. The same basis? A. The same basis.

Q. Mr. Sparks, I find in paragraph five a provision that the parties to this agreement must be in a position to carry their proportion of the cargo; your understanding is that that proportion was one-third? A. Yes.

Q. And it continued one-third from February 14th, 1908, until what time? A. Whenever this agreement came to an end; I think it was the 30th of June, 1909.

Q. And since the 30th of June, 1909, what proportion

141 have the Hamburg American Line carried of the Brazil traffic? A. Well, it varies from month to month, you know. They carry sometimes more than a third and sometimes less.

Q. But approximately one-third? A. Approximately I imagine that is so.

Q. And similarly as to Lamport & Holt Line, they approximately carry about one-third since June, 1909? A. I think probably a little less than one-third.

Q. How about the Prince Line?

142 MR. BURLINGHAM: Do you mean one-third of the total traffic?

MR. CRIM: Of the tonnage.

MR. BURLINGHAM: Of the total traffic between here and Brazil?

MR. CRIM: Yes.

THE WITNESS: I did not understand it that way.

Q. The tonnage between here and Brazil? A. I did not understand it that way at all. I thought you meant as be-
143 tween the various lines if they carried about the same proportion of cargo.

Q. The division has been substantially the same as during the time of the pool? A. There is no division; you mean the proportion?

Q. The proportion. A. Yes.

MR. BURLINGHAM: My point was that I thought your question was so broad. I think now it will appear that the question you asked Mr. Sparks was whether the Hamburg American Lines had carried
144 one-third of the freight between here and Brazil?

THE WITNESS: I did not so understand it.

MR. CRIM: I will cure that; you are right about that.

Q. Since June, 1909, what proportion of the tonnage carried by the Hamburg American Lines, the Prince Line and the Lamport & Holt Line have the Hamburg Lines carried? A. What proportion of the cargo carried by the three lines?

Q. Yes. A. About one-third approximately.

Q. And is it your understanding that the Lamport &

Holt Line have fallen a little behind in their proportion? 145
A. I should imagine approximately less than one-third.

Q. How about the Prince Line? A. Well, approximately a little more than one-third. That, of course, you understand is very general and very rough; I have not the statistics.

Q. From what source have you obtained the information that you predicate that statement on? A. From the weekly reports of the carryings of the steamers.

Q. You see the weekly reports of the steamers of each line? A. Yes. 146

Q. Paragraph six of the Exhibit 2 in the petition under "New York Committee," provides for the formation of a committee at New York, composed of members of the agents or brokers representing the different lines; was such a committee formed? A. Yes.

Q. And when was that? A. 1908.

Q. Do you know what time in 1908? A. I think in July.

Q. And who composed or formed the committee? A. Do you mean who represented the different lines?

Q. Yes? A. At that time Mr. Gottheil represented the 147
Hamburg Lines, and Mr. Daniels the Lamport & Holt Line and Mr. Gerhard the Prince Line.

MR. BURLINGHAM: Which Gerhard?
THE WITNESS: Senior.

Q. Did that committee hold meetings? A. Yes.

Q. And where were those meetings held? A. In the secretary's office.

Q. And who was the secretary of this committee, if they had one? A. Mr. Goodwin.

Q. When did he become secretary? A. In 1908. 148

Q. And where was his office? A. Produce Exchange.

Q. In this city? A. Yes.

Q. Do you know who paid the rent of that office? A. Yes, you have the accounts. I gave them to you this morning. Equally divided between the three lines.

Q. It provided that the Chair was to be taken alternately by each of the parties, did you ever have the honor to sit in that Chair? A. Lots of times.

Q. What were the duties of this committee; what did the committee do? A. They reported the engagements for the various boats from week to week, and any joint contracts

149 that were made, discussed any kicks the shippers might have for lower rates, requests for lower rates, and just the general business of the lines. You have had all the records of those meetings.

Q. Did you carry out the proceedings of these minutes in conformity to those contracts as nearly as possible? A. Oh, yes.

Q. And how were the meetings called; that is, with regard to—did you have special meetings at times? A. Sometimes, yes.

150 Q. And who called them; who had the authority to call special meetings? A. Any one of the agents could call a special meeting.

Q. It provides here that all decisions to be unanimous, excepting with regard to certain freight matters as hereinafter stated. Now, besides the representatives of the three concerns you have mentioned, Funch, Edye & Company, Lamport & Holt, and so on, were these meetings attended by any others? A. There was a clerk from each line present, and the Hamburg-American Line always had a representative there.

151 Q. And as a matter of information did the minutes show just who was present? A. I don't think they did, no.

Q. Who was the representative of the Hamburg-American Line? A. At one time Mr. Stewart, and then Mr. Garvan, whose name you have in the petition, and then Mr. Waldorf.

Q. And what records did this committee keep? A. They kept a record of just what was done at the meetings.

Q. I show you what purports to be the minutes of the 152 meetings of this committee; are you able to tell me whether— A. That does not bear any resemblance to any that I have ever seen. (Referring to minutes of meetings from July 29th, 1908 to April 28th, 1909.)

Q. Now, from time to time the secretary sent reports of the proceedings of those meetings to you? A. He did in my day; we never kept them this way when I had anything to do with it.

Q. Tell us again what period of time you attended those meetings? A. I think from the latter part of 1908. I think that is a copy that the secretary kept of our records. We get a copy of all those various slips on one sheet of paper; this is probably the same thing only in a different form.

Q. Have you any of these minutes in your possession at 153
this time? A. Yes, I have them all.

Q. What information in detail did you submit at those meetings representing Funch, Edye & Company? A. The amount of cargo engaged for each of the steamers scheduled to sail in that or the following month.

MR. KIRLIN: Each of the steamers of your line?
THE WITNESS: Yes; so many thousand cubic feet.

Q. You submitted the name of the vessel that would sail? 154
A. Yes.

Q. From New York to Brazil? A. Yes; the date of our sailing.

Q. The date of its sailing; the ports to which it went? A. Yes.

Q. And the amount in cubic feet of the cargo where it was booked as cubic feet? A. It was all put down as cubic feet, everything.

Q. I show you an entry in a book entitled "Minutes of Meetings from July 29th, 1908 to April 28th, 1909" and I find the entry: "Her freight list amounted to $11,384.14" 155
in an entry with regard to Corrientes; what is that sum of money? A. That is her freight list.

Q. That is, the total freight or shipments from here to Brazil? A. Yes.

MR. BURLINGHAM: In dollars?
THE WITNESS: Yes.

Q. And did you also report the cubic feet vacant? A. We did during 1908 and 1909 as called for in this agreement 156
I believe somewhere.

Q. Why did you report this vacant space? A. Because we wanted to show that we had been in position to carry our proportion of cargo as called for on page 27, the top paragraph.

Q. Of the petition? A. Of Exhibit No. 2 in the petition.

Q. And you wanted credit for that amount of vacant space in the pool? A. No credit; we only wanted to show that we had been in position to carry our proportion had the cargo been available to carry.

157 Q. And you also reported matters of general information to the lines with regard to this traffic to Brazil? A. Yes.

Q. And among other things you reported information that you procured with the Lloyd Brazileiro Line? A. Yes.

Q. And whose business was it to report with regard to the Brazilian Lloyd Line? A. Anybody that happened to have that information that was of interest.

Q. Did you file with the secretary copies of your contract of freightment? A. Yes, only joint contracts covering long period bookings for the berth boats when they were filed
158 with it.

Q. And contracts for a minimum period of time, if any? A. I don't think there was a recognized minimum; only a contract that might come up for consideration by any of the lines over a given period.

Q. Now, what contracts came within the provision for the joint contracts of the three lines? A. Well, that is covered here largely by these; I have given you as far as the contracts made by Funch, Edye & Company are concerned.

Q. Were the lines supposed to make all the contracts, joint contracts? A. Yes, all contracts covering a period of
159 time were joint contracts.

Q. Regardless of the length of that period of time? A. Yes, unless it booked for a specific steamer, then they took no account of the three lines. That is largely for the benefit of the shipper and not for the ship.

Q. And during the period of time that this pooling agreement Exhibit 2 in the petition was in effect did you so make joint contracts on all shipments covering a period of time? A. I don't remember how they were worded as far back as that, but I think they were joint contracts, the same as
160 they are now.

Q. And that course of business has not changed since 1909? A. No.

Q. And continues to-day? A. Yes.

Q. How about the data with regard to incoming shipments; was any data or information submitted to the secretary with regard to shipments to Brazil from this country. A. No.

Q. The manifest of all outgoing steamers was submitted to the secretary? A. I think they were during the year that the pool was in effect, but not since then.

Q. Do the lines still employ a secretary? A. Yes.

Q. And have his duties changed any since 1909? A. Except that he has no pool account to make up. 161

Q. That is, he makes up no pool accounts? A. No.

Q. Now, what were the nature of those accounts that he made up; they were governed by paragraph three in Exhibit No. 2 in the petition?

MR. BURLINGHAM: You mean that was the way the charges were made up?

THE WITNESS: Yes.

Q. And how is the substance of that provision carried out to-day with regard to this business? A. Which business? 162

Q. Of the three that you have just referred to? A. It has not been in effect since 1909.

Q. Now, what is your carrying rate, if you have one, at this time corresponding to the $1.25 in provision No. 3? A. That agreement was cancelled in 1909.

Q. Do you have a carrying rate at this time? A. Not that I am aware of.

Q. How about the reception charges at New York, have they changed? A. They may be a little higher now; labor is higher, but I am not aware of any change. 163

Q. And how about the landed dollar and the "f.f.a." dollar at points in Brazil; has there been any change in that? A. They are not in effect any more.

Q. Are the rates the same now? A. There are no rates.

Q. Your line is not paying any rates or receiving any rates with regard to those matters at the points in Brazil at this time? A. I don't think that we quite understand each other, Mr. Crim. Here are arbitrary rates fixed for the purpose of making up accounts; in 1909 they were blotted out so that there is no question whether they are the same now as they were then; it was an arbitrary and it was cancelled. 164

Q. And you have no arbitrary rates in effect so far as your line is concerned to-day? A. So far as I know, none.

Q. How about ad valorem cargo; are you still charging 75 per cent.? A. This contract is cancelled; there is no 75 per cent., 100 per cent., no anything.

Q. The secretary apparently made a monthly statement regarding the sailings of the Syndicate Lines under paragraph 7 of the pooling agreement; have you those on file in your office? A. You asked me that question some time

165 ago; I have not been able to find them. I don't know whether he ever made them, but you can subpoena the secretary and he can tell you.

Q. Does he at this time make any statement of that kind to you? A. No.

Q. What kind of report does the secretary make to you, if he makes any? A. He sends us a weekly record and I suppose he renders an account for his office expenses at some stated period.

Q. And what data or information does this weekly report
166 give you? A. It gives the bookings for steamers scheduled to sail in the current months from the following months, and any joint contracts that are made.

MR. BURLINGHAM: Are you referring to commissions?

THE WITNESS: Yes, sir.

Q. Now, with regard to paragraph 8, the existing tariff rates to be revised as agreed upon; did you receive a revision of the tariff rates in 1908? A. I have given you all
167 we have, Mr. Crim. We do not keep rates that are out of date as a rule, and everything that I have got I brought in here.

Q. Do you recall whether about that time there was a revision of rates? A. I brought the slips you have already got in evidence there, showing the revised rates on staple articles, and for the other articles I believe as far as I know we adopted the old tariff which was in effect before 1908.

Q. And your concern adheres strictly to those rates? A. Yes.

168 Q. And so far as you know the other members of the conference here do? A. Yes, I think so.

Q. Now, it appears from paragraph 8, that certain rates —the making of certain rates—came within the jurisdiction of the New York Committee or conference—that the rates came within the jurisdiction of the New York Committee; what were the conditions under which the New York Committee had the authority to make rates on shipments to Brazil? A. I think on staple articles unless we were bound by definite instructions from the principals which came to us from time to time we had under certain circumstances liberty to vary those rates.

Q. And what commodities have you in mind when you say staple commodities? A. Gasoline, resin, kerosine. 169

Q. Flour? A. Yes, I think at that time flour too.

Q. And with respect to time contracts what was your jurisdiction in making rates? A. We had none, we had to apply to the principals for authority.

Q. No time limit at all? A. Oh, you mean on staples?

Q. Yes? A. Well, I think we had some understanding that we could not book for more than three months ahead; something of that sort.

Q. On all continuing contracts for the transportation of property not staples for a period greater than three months you had to obtain authority from Europe? A. Yes, I think we had to get authority from the other lines for that. 170

Q. But on staples, where the market was fluctuating from hour to hour, you had authority to make rates up to a contract covering a three months' period? A. Yes, we had certain liberty in the matter, or certain liberty to vary the rates.

Q. And what was the course that you pursued in making those rates? A. We exchanged a slip giving authority to the agent that wanted to make a particular booking to make it, and it was initialled by the other two agents. 171

Q. And in making your rate and in carrying on your business had you any particlar place where you could be found if an agent wanted to make a rate quickly? A. Yes, either at our offices or at certain times of the day on the Produce Exchange.

Q. As a matter of fact these particular rates that were made here were usually made on the Exchange, were they not? A. Quite often; just for convenience. 172

Q. And, if I understand you correctly, if an agent wanted to make a particular rate he wrote it out, the terms informally, on a slip of paper and the other members of the conference initialled it? A. Yes.

Q. And then what became of that slip of paper? A. I am not very familiar with the formula, but I think it was sent to the secretary and the secretary sent a copy to each of the agents.

Q. Now, in case one or more of the members in the New York conference would not agree to making this rate what recourse had the agents who desired to make it? A. I

173 think in practice we usually cabled to the secretary in London under those circumstances.

Q. Do you mean that each agent would cable? A. No, the secretary in New York would cable to the secretary in London.

Q. This information would be referred to the secretary here? A. Yes.

Q. And he would cable to some one in London? A. Yes.

Q. Who was it in London he cabled to? A. Mr. Woods, I believe was the secretary there.

174 Q. And what was his business? A. He passed on such cables to the three principals and transmitted their reply back to the secretary in New York.

Q. And was Mr. Woods a member of a corresponding conference in London? A. He was the secretary in London.

Q. And who composed this conference in London; of whom did it consist? A. The three principals that you have cited here in this petition.

Q. Did you ever attend any of the conferences in London of these lines? A. No.

175 Q. Did Mr. Woods ever attend any of the conferences here? A. Not to my knowledge.

Q. Now, what is your course of procedure now with regard to rates; how do you obtain authority to make rates on staples at this time? A. We are practically entirely controlled by directions from the other side, and have been for some time. If we want to change a rate we have to cable to the other side to get it changed.

Q. And do I understand you to say the old course of business of initialling a slip of paper has passed out of existence? A. No, I think there are still some slips signed

176 now, but to all intents and purposes the principals have taken the rate making power away from us.

Q. What commodities, if any, are there transported from New York to Brazil that there is not an agreement between the parties as to the rate? A. I don't know of anything.

Recess taken until 2:00 o'clock p. m.

Afternoon session.

THOMAS A. SPARKS, recalled. 177

DIRECT EXAMINATION CONTINUED by Mr. Crim:

Q. Mr. Sparks, you spoke of a London conference composed of three lines, the three lines who are parties to the pooling agreement here, exhibit 2, in the petition; have you ever attended any of the meetings? A. I answered that this morning.

Q. Have any members of your firm attended meetings of that conference? A. I don't know.

MR. SPOONER: Have you ever heard that they did? 178

THE WITNESS: No.

Q. Have any of the members of that conference in London attended the meetings here? A. I think one of our principals once came to a meeting—I am not quite clear on that though—that was back in 1908 or there abouts.

Q. Whom do you have in mind? A. Mr. Cropp.

Q. You have a gentleman identified with the Hamburg Line by the name of Ballin, haven't you? A. Yes, sir. 179

Q. Does he occasionally come to this country? A. Yes.

Q. Have you seen him at any of the meetings here in New York? A. You mean at the agents' meetings?

Q. Yes. A. No.

Q. Insofar as your concern is concerned, the Hamburg-American Line and the Hamburg South American Line are operated as one line between here and Brazil? A. Yes.

Q. And you are agents for both? A. Yes.

Q. And the same individuals give you instructions, individuals representing those lines give you instructions with regard to your duties? A. We only get instructions 180 from the Hamburg-American Line here.

Q. And who is the gentleman that is in charge of their affairs here? A. I think Mr. Sickel.

Q. Mr. Sickel, I believe you said this morning, has attended from time to time the local conferences? A. Once in a great while he has been, but not for many years—two or three years.

Q. Apart from the identification you described this morning between Funch, Edye & Company and the Hamburg Lines, is there any other identification in the nature of stock ownership in those lines? A. You mean do Funch, Edye & Company own stock?

181 Q. Yes. A. No.

Q. Do any of the members of Funch, Edye & Company own stock in those lines? A. I do not.

Q. What is your knowledge with regard to your partners owning stock in those lines? A. I have no knowledge; I don't think they do.

Q. Are they officers of those lines? A. No.

Q. Members of the Board of Directors or Advisory Committees of those lines? A. No.

Q. So the sole identification with the Hamburg Lines
182 and the members of Funch, Edye & Company is that as a freight broker? A. Principal and agent, that is all.

Q. Have you ever heard of a line engaged in traffic between the United States and Brazil by the name of Norton Line? A. Yes, they have been in it once or twice.

Q. And is there a Norton Line to-day trading between North America and Brazil? A. No, they have never had a line; they have had one or two boats they put in there.

Q. Are they still operating those boats? A. No.

Q. When did they discontinue the service? A. They never began it; they have had one or two boats.

183 Q. And when did they discontinue operating that one or those two boats? A. How can you discontinue something you did not begin? They had one or two boats at odd times and they carried a parcel of rails, I think it was, in there; it never was a service.

Q. Were they ever parties to any Pooling Agreement? A. No.

Q. Or Traffic Agreement? A. No.

Q. Did they attend or representatives of that line attend meetings of the local conference? A. No.

184 Q. Were there any arrangements between the parties of the local conference with representatives of the Norton Line with regard to rates? A. No.

Q. Or amount of traffic? A. No.

Q. At any time? A. No.

Q. How long has the Brazilian Lloyd Line been operating between the United States and Brazil? A. I don't know when it began.

Q. It was operating steamers when you entered the business? A. I think it was about that time that it started, but I am very hazy on that.

Q. And they are still operating steamers? A. Yes.

Q. And have been at all times? A. Yes, sir, for several 185
years past.

Q. Have they at any time been parties to any pooling arrangement? A. No.

Q. With respect to the Hamburg Line so far as you know? A. Not that I have any knowledge of.

MR. SPOONER: When you say the Hamburg-American you mean the three?

Q. The three? A. Not that I know of.

Q. Has there been any arrangement with regard to main- 186
tenance of rates on the property between North America and South America, Brazil? A. No; they always follow our rates; just below them.

Q. They are always a little below your rates? A. Yes. No matter what the rate is they just under-quote us.

Q. And when the three lines who are parties to the Pooling Arrangement of 1908 raised their rates a little the Lloyd Brazilian would increase theirs? A. Yes, just enough to be under.

Q. And when the three lines, parties to the Pooling 187
Agreement of 1908, decreased their rate there would be a corresponding decrease of the Lloyd Brazilian rate? A. Yes; I think they always kept just below us.

Q. And do they carry all kinds of property? A. Yes.

Q. And freight? A. Yes.

Q. And does your line carry all kinds of property and freight? A. Yes, all kinds.

Q. Has there been any limitation at any time since you have been in the business upon the amount of property that either of the three lines to the Agreement of 1908 were to carry? A. No. 188

Q. Did you ever attend any conference meeting other than the one here that we have talked of this morning in any other trade? A. Oh, yes.

Q. I will change it; have you ever attended any other conference with regard to trading with Brazil? A. No. Where do you mean, in New York?

Q. No, anywhere in the world, with regard to Brazil trade? A. No.

Q. Do you know whether there is a conference at New Orleans with regard to Brazilian trade? A. I imagine not; I never heard of it.

189 Q. Do you know whether there is a conference in Europe with respect to trade between Brazil and European points? A. Yes, I think so.

Q. And are the lines that were parties to the Pooling Agreement of 1908 parties to that Agreement, parties to that conference?

MR. SPOONER: I move to strike out that last answer upon the ground that the question is not within the issues and incompetent.

(Question read.)

190 MR. SPOONER: I object to that as incompetent, irrelevant and not within the issues mentioned in the petition, will you answer it, Mr. Sparks?

A. I think some of them are. I am not acquainted with the situation, but I think some of them are; some not.

Q. Where is this conference?

MR. SPOONER: I object to that on the same grounds.

191 A. It is not a living thing. I don't know what you mean by where is it.

Q. Where was it located; where was its office? A. I don't know that it has an office.

Q. I understood you to say that you knew of another conference to which members of these lines were parties? A. Yes, and you asked me where its office is, and I say that I don't know it has an office.

Q. Do you know where the conference, members of the conference reside?

192 MR. SPOONER: I object to that; same objection.

A. I don't know just who the members of the conference are, Mr. Crim.

Q. Do you know any of them? A. Our people are interested.

Q. Do you know of any other lines that are interested in such conference?

MR. SPOONER: Same objection.

MR. BURLINGHAM: This is a European conference, from Europe to Brazil?

MR. CRIM: Yes.

A. I believe the Lamport & Holt Line. 193

Q. The Prince Line? A. I believe not.

Q. And that conference—I understood you to say you never attended any meetings of such conference; now, has your concern of Funch, Edye & Company had any business transactions with members of that conference as members of the conference?

MR. SPOONER: I object to that as incompetent, irrelevant and I don't believe tthe witness is obliged to answer the question.

194

Q. Perhaps we can get at it in this way. You spoke this morning of a gentleman who was secretary of the conference in London? A. Of the New York-Brazil conference, yes.

Q. Now, do you know of any other New York-Brazil conference? A. I really don't understand you, Mr. Crim.

Q. We have a New York-Brazil conference with a Committee here? A. Yes.

Q. We have a New York-Brazil conference with a Committee in London? A. Have we? 195

Q. I am asking you that question? A. I didn't know it.

Q. Now, then, did you receive any information from time to time with regard to shippers who shipped by the Hamburg Lines from South America to the United States and from South America to Europe?

MR. SPOONER: I object to the question as double; part of it, I think, is irrelevant and another part as far as New York and Brazil is concerned I object to on another ground, not applicable to the second branch of the question. 196

Q. (Question read.) A. What information do you mean, Mr. Crim; any information in regard to the matter? What do you mean?

Q. Do you know whether some of the shippers in South America make shipments to Europe as well as to the United States? A. I don't know anything about it.

Q. You know as a matter of general information, do you not, that there are very large quantities of coffee shipped from South America to Europe? A. Yes.

197 Q. Do you know any of the concerns that ship coffee from South America to Europe? A. No.

Q. And these coffee shipments that you have in mind are carried by the Hamburg American Lines?

MR. SPOONER: From where?

MR. CRIM: From Brazil to Europe?

MR. SPOONER: I object to that as incompetent and leading and immaterial.

Q. (Question read.) A. I suppose they carry some, but
198 I don't know it; I don't know anything about the European business at all.

MR. SPOONER: Move to strike the answer out as incompetent and irrelevant.

Q. Do you know whether the rates on coffee shipments from South America to Europe are the same or not as from South America to the United States over the Hamburg American Lines? A. I don't know anything about it.

Q. Now then, I want to see if we can get this information
199 with regard to the rates a little more definite without putting these rate sheets in the record. It is your understanding that Exhibit 1 for identification, the printed book, was effective— A. I told you this morning, Mr. Crim, I don't know when that went into effect. I find the date 1905 in it; that is three years before I knew anything about the trade.

Q. I find here memoranda on the first leaf, "All rates are increased three cents per cubic foot or six cents per hundred pounds with the exception of the ones marked X as per memo signed January, nineteen hundred and—what is
200 that date—five or eight? A. I should say that was five, but I don't know.

Q. Whose writing is it, if you know? A. I don't know.

Q. Have you had anything to do with the corrections or changes in this book indicated in ink, or with typewritten schedules, rate changes? A. No.

Q. Who is the rate man with your line? A. Mr. Betts.

Q. And he has charge of these documents? A. Yes.

A. And is ordinarily the custodian of them? A. Yes, he can tell you all about that.

Q. And you obtained them from him to bring here? A. I did, yes.

MR. CRIM: For the present I am through with this witness; I want to reserve the right to recall him for further examination. 201

MR. SPOONER: That is all right, and I reserve the right to recall him after you get through, for cross-examination.

LORENZO DANIELS, called on behalf of the Petitioner, being first sworn, testified as follows: 202

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Daniels, what is your business? A. General merchant.

Q. What other business are you engaged in, if any? A. That covers pretty near everything, sir.

Q. What business are you in that is related in any manner to the steamship business? A. We are agents for several lines of steamships.

Q. And by "we" you mean— A. The firm.

Q. What firm? A. Busk & Daniels. 203

Q. You are a member then of Busk & Daniels? A. Yes.

Q. How long have you been a member of that firm? A. I think about four years.

Q. And Busk & Daniels are steamship agents and also general merchants? A. Yes.

Q. With offices in New York at 301 Produce Exchange? A. Yes.

Q. And that firm is composed of the defendant Frederick T. Busk and yourself? A. Yes.

Q. What firm did that firm succeed, if any, when it was organized? A. Busk & Jevons. 204

Q. And who were the members of the firm of Busk & Jevons? A. Mr. Thomas E. Jevons, Mr. Frederick T. Busk and myself.

Q. How long was that firm in existence? A. I should say a matter of twenty, thirty years.

Q. You have been a member of that firm for twenty or thirty years? A. Fifteen years past; ten or fifteen years.

Q. As general merchants what does your firm do? A. We are steamship agents and we do a general merchants' business.

Q. In what lines? A. Export and import.

205 Q. What character of goods? A. A general range, staples and manufactured goods.

Q. Be a little more explicit, Mr. Daniels; what do you mean by staples? A. I mean by that we handle grain, oil, wool, hides, most everything; teas and coffees; everything in that line.

Q. Manufactured goods? A. Manufactured goods.

Q. What class of manufactured goods? A. Nearly everything called for in the commission business.

Q. Name some of them? A. Dry goods, railway mate-
206 rials, small manufactures.

Q. You import those into the United States? A. We import certain classes and export the manufactures.

Q. Sell them in the United States? A. We sell the imports, yes.

Q. And export to what parts of the world? A. Mostly at present to the Far East, China and some to England; Europe.

Q. With reference to the steamship traffic, what business does the firm of Busk & Daniels do? A. We are agents for the Lamport & Holt Line principally.

207 Q. How long have they been agents of the Lamport & Holt Line? A. Ever since the firm has existed.

Q. Was the firm of Busk & Jevons the agent of the Lamport & Holt throughout its existence as a firm? A. Yes.

Q. As agents of Lamport & Holt what services do you perform? A. We do the general shipping business of the steamers to the port here in the matter of engaging cargoes, loading them and disbursing them.

Q. Is your contract with Lamport & Holt under which you perform these services a written contract? A. I don't
208 think we have a contract. If it is, it is so far back I have never seen it.

Q. What other agents, if any, have the firm of Lamport & Holt with reference to their Brazilian business? A. Where?

Q. Anywhere. A. In New York?

Q. Anywhere. A. Only ourselves.

Q. Only yourselves in New York? A. Yes.

Q. What other agents in other places? A. They have a long list of agents in nearly every port in the world.

Q. Have you a list of those agents? A. I can give it to you; I haven't got it with me.

MR. SPOONER: You mean shipping agents or as 209
importers?

THE WITNESS: I understand the question is how many agents Lamport & Holt have, other agents; they have a long list of agents in nearly every port in the world.

Q. Do you know what other agents they have in the United States? A. They have an agent in New Orleans.

Q. What is his name? A. Mr. Alfred LeBlanc.

Q. Have they other agents in the United States? A. I 210
think they have.

Q. Don't you know? A. No, I do not.

Q. Are you the general agents in New York of the Lamport & Holt Line? A. Yes.

Q. Are there any other general agents in this country that you know of? A. General agents is simply— I don't know what the expression of the term means; I should simply say we were agents in New York to be literal.

Q. To and from what ports of the United States does the Lamport & Holt Line operate to Brazil? A. New York.

Q. To and from the port of New York? A. Yes. 211

Q. Does it have a service either to or from the port of New Orleans from Brazil? A. It has boats running to New Orleans.

Q. From Brazil? A. Yes.

Q. Have they got boats from New Orleans to Brazil? A. No.

Q. Has that always been the case since you have been familiar with the line? A. Practically always; they started a great many years ago.

Q. About how long ago, Mr. Daniels, without fixing it 212
absolutely? A. Oh, I should say roughly twenty years past; possibly as far back as twenty years.

Q. What ships do Lamport & Holt operate between New York and Brazil? A. Such of their fleet as are announced for the service; we have a fleet of about fifty steamers.

Q. Do all of them come to and from Brazil to New York? A. Some of them would not come for three or four years, others may come more regularly.

Q. Are there certain boats of the Lamport & Holt Line that are regularly operated between New York and Brazilian ports? A. Yes.

213 Q. What boats are those? A. The *Vestris, Vasari, Verdi, Voltaire, Byron* and *Tennyson.*

Q. How long have those boats been operated in that traffic? A. The *Byron* and *Tennyson* for ten years, and the other boats at intervals have come on as they have been built.

Q. When these new boats have been built have they replaced other boats in the service, or have they been additions to the service? A. They originally replaced other boats.

214 Q. What do you mean by "originally"? A. Well, a great many years ago there were the *Coleridge* and *Velas* and an entirely different fleet operating, and they were supplanted by new boats; they have practically gone out of existence; the boats have been broken up or sold.

Q. Then you mean for a time whenever a new boat entered the service, an old one was withdrawn? A. No, not exactly.

Q. What do you mean? A. You asked me if they ever replaced any. These old boats were fifteen years ago in the trade and were replaced by the *Byron* and *Tennyson*
215 and later by, I think, the *Verdi;* they gradually withdrew their other boats which were sold and went to the scrap heap as we say.

Q. What was the last addition to the fleet? A. The Vestris.

Q. That was an addition, was it; it did not replace any boat? A. It did not replace any boat.

Q. And when the *Vestris* entered the service were Lamport & Holt sailings for the year increased? A. Not in conjunction with her entering the service, I don't think.

216 Q. Was some other boat withdrawn from the service or did it lie idle? A. No, it is in process of readjustment; the *Byron* and *Tennyson* have probably seen their day and they probably will cease to be active boats and newer boats will take their places.

Q. But that is prophesying, Mr. Daniels; the *Vestris,* as I understand it, is now actually in service? A. I believe she will replace the *Byron* or *Tennyson,* eventually.

Q. But the *Vestris* and the *Byron* and *Tennyson* are still in the service now? A. All running in the service now.

Q. What are the principal imports from Brazil carried by the Lamport & Holt Line? A. Coffee, cocoa, skins and woods.

Q. What proportion, roughly, of the importations is 217
coffee? A. You might add sugar to that list, although it is not active now, I should say at least 75%.

Q. Isn't it considerably more than that? A. It is fully 75%, and if you come down to statistics, possibly more.

Q. Wouldn't you say that your best judgment would be that it was over 90%? A. It is entirely a matter of figures; it is the largest proportion.

Q. I don't want to introduce any statistics here unless we have to, but what is your best judgment about it; isn't it that it is over 90% of the total importations? A. There 218
are large shipments of ores come in occasionally; I don't know what ratio they bear to the whole. You can put it at any figure you like; it is the largest proportion; I haven't got the actual figures.

Q. Do you know what the total number of bags carried by the Lamport & Holt Company, for example, in a year, say? A. In the neighborhood of a million bags.

Q. Carried to New York? A. Yes.

Q. Do you know what the number carried— A. New York and New Orleans together.

Q. Do you know what the total number carried by the 219
other lines running from Brazil to New York and from Brazil to New Orleans is? A. I took the liberty of putting the coffee circular in my pocket. (After consultation.) If you want statistics they are all there in the coffee circular.

Q. That is for one month, is it? A. You will find the statistics for the year there somewheres.

Q. Do you happen to know the proportion of the total importations to New Orleans from Brazil coffee constitutes? A. The larger proportion into New York. 220

Q. Well, about in what percentage would you say? A. I have never figured it.

Q. It would be safely over 75%? A. I should say so.

Q. Aside from the Lamport & Holt Line what other lines are engaged in the traffic between New York and Brazil now? A. You mean, of course, to Central Brazil?

Q. Yes? A. The Lloyd Brazileiro, the Hamburg American, Hamburg South American, the Prince Line, occasional steamers of the Norton Line, and some outside steamers that make occasional voyages.

Q. When was the last sailing that you recall of the Nor-

55

221 ton Line in this traffic? A. I think it was somewhat over a year ago.

Q. How much over? A. I couldn't tell you; time flies so fast I couldn't tell you.

Q. Wasn't it over two or three years ago? A. I think not.

Q. By outside steamers that make occasional voyages, do you mean steamers that are chartered as tramp steamers? A. Steamers that are put on charter or despatched; not necessarily tramp steamers; from Philadel-
222 phia they despatch one or two steamers.

Q. I was speaking about the traffic from New York, Mr. Daniels. A. And there have been one or two steamers gone from New York despatched by some firm here; I don't know exactly what the firm is.

Q. How many in a year would you say those sailings constituted, sailings of that character? A. Roughly half a dozen.

Q. Half a dozen in a year? A. Yes, roughly.

Q. A negligible quantity in the business practically? A.
223 I wouldn't say so; quite an important factor.

Q. Mr. Daniels, you are here in response to a subpoena *duces tecum* calling upon you to produce among other things the original agreement, a substantially correct copy of which appears in Exhibit 1, to the petition in this cause; have you that original agreement? A. No.

Q. Has it been in the possession of Busk and Daniels or Busk and Jevons? A. No.

Q. You have had copies of it, I presume? A. I don't think so.

Q. You think no copy was ever sent you from Europe?
224 A. I think not.

Q. For your information? A. I think all we had was an abstract copy of what pertained to the New York business.

Q. Is that now in your possession? A. I could not answer it. I think it has been turned in to the District Attorney when he was asking us for our documents.

Q. Have you any receipt from the District Attorney, indicating that he had that? A. That I could not say. It went entirely through our hands.

Q. Have you made any search for that document? A. It was not asked for.

Q. You were asked at the conclusion of this subpoena to 225
produce all other deeds, conveyances and articles which you have in your custody or power concerning the premises, were you not? A. Anything you want you can have with the greatest pleasure, but we have not provided ourselves in anticipation of your wants.

Q. Paragraph 2 calls for the original itinerary drawn up and agreed upon in pursuance of paragraph No. 1 of the memorandum of agreement of February 14th; have you that itinerary? A. No.

Q. Have you searched for it? A. We never had it. 226

Q. You are sure of that? A. Quite sure.

Q. Did you ever have a copy of it? A. No, I don't think a definite thing of that character exists; at least, I shouldn't think it did. Unless you mean by that what is in the agreement regarding the twenty-four sailings, which you have. That we do not call an itinerary in our business.

Q. I call your attention to the language in that memorandum agreement of February 14th, 1908, as follows: "An itinerary covering the requirements of the various ports to be drawn up and agreed upon, the object and intention 227
being that an excess of tonnage for any particular destination may be avoided," and you, so far as you know, say that no such itinerary has ever been drawn up? A. I don't think you use the word itinerary advisedly. We draw up an itinerary of our own line for twelve months at a time, but I don't think that any itinerary is drawn up of the freight steamers further than might be shown from week to week by boats that are put on the berth; that would constitute an itinerary.

Q. You think that would constitute an itinerary within 228
the meaning of this paragraph? A. That would constitute an itinerary within the meaning of that paragraph, yes.

Q. Would there be anything in the sort of itinerary that you speak of that would be in any way calculated to avoid any excess of tonnage for any particlar business? A. The idea of such an itinerary would be to only berth such tonnage to such ports as the trade might require; in other words, if the trade wanted a boat a month to a small port only one boat would be scheduled or itinerized, and it would not be necessary to send three boats to do the work of one boat.

229 Q. Let me see if I understand you: You mean that the only itinerary that this paragraph contemplates is that itinerary drawn up by each individual line for its own business? A. No, you misunderstand me. It would be an itinerary drawn up to meet the requirements of the trade from day to day.

Q. That is as determined by the three lines in the conference? A. I presume that would be the procedure.

Q. And that would be on the other side of the water or here, in England or here? A. I presume that would be
230 drawn up here. It is not drawn up, it is simply arranged here; in other words, that two boats should not do the work of one.

By Mr. Crim:

Q. The sailing of each vessel was always subject to the Committee in conference here, was it? A. Not entirely. The larger portion of Brazil have a regular flow of traffic that requires at least a certain number of boats at regular intervals to sail to take care of it. It is a legitimate requirement of the trade. To small ports that your docu-
231 ment mentions there would hardly be enough cargo to warrant a boat calling more than once a month, possibly once in two months; that is, to pay the expenses of the boat calling, and in consultation with the trade generally some line would supply that service and would so report it, that their boat was making that calling; that would be an economical arrangement to serve the trade and to prevent an excess of cost in operating the steamship service.

Q. You are referring to steamers that proceed here or from here to Brazil? A. New York to Brazil.

232 Q. How do you arrange with regard to starting a vessel? A. Generally one of the lines would have the business offered and they would generally make their own arrangements to accept it.

Q. And they would notify the other members of the conference here that they were going to have such and such a vessel sail on such and such a date? A. For such and such a port; they would report it as you will see in your weekly reports.

Q. And any itinerary or any arrangement for vessels leaving this harbor was always at the notice of the other members of the conference? A. Not at the notice of the members, but probably at the notice to the other members.

Q. Notice to the other members? A. Yes. 233

Q. And that was necessary under your arrangement, wasn't it, to notify them? A. It was our expectation to report it.

Q. It was part of the arrangement, wasn't it? A. It was part of our custom to take that procedure in reporting weekly, the scheduling of the boats, the ports they call at——

Q. When did that custom begin? A. It has always existed.

Q. Was that a custom in 1907 and the early part of 1908? 234
A. It has always been a custom in every trade.

Q. You have always informed the other two lines, the Hamburg Lines and the Prince Line, that your boat was going to sail and would have so much space? A. No, we have always advised as your records will show what ports the boats were scheduled for and the amount of cargo that they had booked and accepted for that port.

Q. And you did that every week during the year 1907 and 1908? A. The records will show it.

Q. What is your recollection with regard to it? A. In 235
conformity with the record. I have no personal recollection; the records will show it.

MR. BURLINGHAM: You are interrogating prior to the Ageement of February 14th?

MR. CRIM: This Pooling Agreement.

THE WITNESS: They offered for economy to serve the trade at less price possibly.

Q. Now, Mr. Daniels, what I want to get at is this: You say it has been a custom for a great many years to notify 236
the other lines if you were going to start a vessel for Brazil on a particular day? A. No, sir.

Q. And that you would have so much space for them? A. No, sir, not at all that.

Q. Now, when did that course of business begin? A. Not we proposed to berth a boat for any time and how much at all as you put it. We did not notify the other lines that space we had. If we had taken a contract for a port, the record will show that we would berth the boat for the port and the amount of cargo that we had taken. The boats

237 generally are capable of carrying a great deal more cargo than that particular booking would probably amount to. They covered the needs of that port for the time.

Q. When did you commence to notify them of this vacant space? A. We didn't notify them of any vacant space.

Q. Never have? A. Not in connection with the itinerary, no, sir.

Q. Leaving out the word itinerary, have you or have you not during the past five years notified the other lines when your boats were about to sail of the amount of vacant space
238 you have? A. I think the records will show that during the period we probably did. I don't recollect anything special about it.

MR. BURLINGHAM: Why don't you make it clear you want to know before the Agreement and after the Agreement?

Q. I show you an entry in the book marked "Minutes of Meetings from July 29th, 1908, to April 28th, 1909," have you seen this book before? A. I could not answer, but I
239 think likely.

Q. Where did you likely see it? A. I passed those books all over to the District Attorney.

Q. And where did you receive them; where did you get them in the first place? A. I assisted Mr. Goodwin to get him the books that he wanted from the committee. I think a year ago or something of that kind.

Q And were they in Mr. Goodwin's office? A. Yes, they were in Mr. Goodwin's office.

Q. Now, I show you this entry under date of December 30th, 1908: "S.S. *Sieglinde*, sailed December 24th for Per-
240 nambuco, Bahia, Rio de Janeiro and Santos; 37,000 cubic feet of cargo, including one hundred and fifty barrels of resin, two hundred and fifty barrels of flour and sixty-one hundred cases of oil, and her freight list amounts to $5,889; she had forty-six thousand feet of vacant space." To which line does this steamship belong referred to in this minute, if you know? A. Funch, Edye & Company's principal.

Q. It belongs to the Hamburg-American Line? A. I don't know whether she is in the Hamburg-American service or not.

Q. In this business had you regarded her as a Hamburg Liner? A. Regarded her as what we call the German Line.

Q. Now then, this minute shows that she had 46,000 feet 241
of vacant space; does that refresh your recollection with regard to reporting vacant space on the steamers? A. I think that the other lines reported it and if we had any we probably reported it also. These records will show. You will find our reports here as well as the other lines.

Q. And how long have the lines been reporting information of that nature to the committee? A. Exactly what nature do you mean, Mr. Crim?

Q. This minute; the number of cubic feet of cargo. A. The number of cubic feet of cargo booked? 242

Q. And the name of the vessel and when she would sail and where she was sailing to; how long has it been a custom to submit that information to the conference? A. It has always been a custom.

Q. And has there always been a conference? A. Not always.

Q. Was there a conference in the year 1907 and the early part of the year 1908? A. I cannot recall without something to refresh my memory, but I think there were some during that period.

Q. You know there was a conference in 1908 and 1909, 243
don't you? A. Yes.

Q. Do you know of any conference preceding that here at New York?

MR. KIRLIN: Objected to as immaterial and outside of the issues of this enquiry.

MR. BURLINGHAM: Answer it, Mr. Daniels, just the same.

A. I think there were.

Q. Where? 244

MR. BURLINGHAM: Same objection, but answer.

A. For several years previous.

Q. For how many years previous?

MR. BURLINGHAM: The same objection.

A. I do not recall.

Q. When did it terminate?

MR. BURLINGHAM: I make the same objection.

245 MR. KIRLIN: Let it all be taken subject to this objection.

MR. CRIM: Yes.

A. I think in 1907.

Q. So that during the period when there was no conference from 1907 to 1908 that custom was in effect of advising the other lines, was it? A. If there was no conference it was not.

246 By Mr. Montgomery:

Q. You were asked to produce a printed document dated on or about July 15th, 1908, entitled "Notice to Shippers from Santos"; did you find that document or such a document? A. I find we had a copy.

MR. BURLINGHAM: You have copies right here.

MR. MONTGOMERY: I want Mr. Daniels to produce his if he has it there.

(Mr. Burlingham produces copy.)

247 Q. Is that the notice to which you refer? A. I think so.

Marked Petitioner's Exhibit No. 11.

MR. KIRLIN: We object to any evidence on the subject of rebates on inward cargoes on the ground that any agreement in respect of those, or any circulars issued in respect of those were issued abroad and not within the purview of the suit and all the evidence in regard to it is immaterial, irrelevant and incompetent in this proceeding.

MR. BURLINGHAM: That objection is for the benefit of all the companies.

248 MR. KIRLIN: May it be understood that all evidence taken on that line is subject to that objection?

MR. MONTGOMERY: Yes. I will offer that in evidence as Exhibit No. 11.

Q. Mr. Daniels, how came this Notice to Shippers from Santos into your possession? A. I think it was sent to us from Europe as matter of information.

Q. D you remember about the time that that was received by you? A. I do not.

Q. I see that it is dated the 15th of July, 1908; do you recall whether it was soon after that time? A. I presume

it would have been sent us about that time as matter of 249
information.

Q. Do you recall whether it was sent with a letter accompanying it? A. I do not.

Q. You made no search for any letter accompanying that; I don't know that the subpoena calls upon you to produce it? A. It is really a matter we have no interest in further than information.

Q. And you don't know whether there was a letter accompanying that? A. No; I should hardly think there would be, just more than mentioning the fact that it was 250
sent to us for information.

Q. Other than it was sent to the firm of Busk & Jevons or Busk & Daniels? A. Busk & Jevons, I should think.

Q. Will you endeavor to find the letter with which that was sent, if one came with it? A. I will.

Q. You were also asked to produce a document dated on or about July 15th, entitled "Notice to Shippers"; did you succeed in finding that? A. Yes.

MR. BURLINGHAM: Here it is here. I suppose that is what you want, "Notice to Shippers." What 251
is the difference between them?

MR. MONTGOMERY: One is "Notice to Shippers at Santos," and the other is "Notice to Shippers."

Q. How did this come into your possession, this notice to shippers that begins "Shippers of coffee from Rio" and so forth? A. I presume it was sent to us at the same time the preceding document was sent us.

Q. You think you received this— A. Simultaneously I should think as a matter of information.

252

MR. MONTGOMERY: I offer that in evidence.

Marked Petitioner's Exhibit No. 12.

Q. This paper entitled "Notice to Shippers," and commencing "Shippers from Bahia," I ask where you received that from, how that came into your custody? A. I presume it came the same time the two preceding documents were received.

MR. BURLINGHAM: Dated the same day.

MR. MONTGOMERY: Dated also July 15th, 1908. I offer that in evidence also.

Marked Petitioner's Exhibit No. 13.

253 Q. Then, Mr. Daniels, all three of these papers, exhibits numbers 11, 12 and 13 were sent you by your principals, Lamport & Holt? A. I think so.

Q. From Liverpool? A. I think so.

Q. For your information? A. I think so.

Q. And to advise you of the manner in which Lamport & Holt business was being conducted? A. That is an inference; I presume that was their intention.

Q. You were asked to produce here, paragraph six, document entitled "Supplementary Notice to Shippers From
254 Santos"; have you that document? A. I have not been able to find it if we ever had it.

Q. You have searched for it? A. Yes.

Q. Paragraph seven calls upon you to produce contracts between Hard, Rand & Company on one part, and the above named steamship company, meaning Hamburg-American, Hamburg South American, Prince Line and Lamport & Holt and others relating to the transportation of coffee and so forth from South America to the United States; have you searched for such contracts? A. To the best of my knowledge we have never had them or seen
255 them, or known of them, of their contents.

Q. You would know it if your firm had them? A. If my firm had them, yes.

Q. Paragraph eight calls upon you to produce an agreement of 1909 or 1910 between these lines relating to pooling profits in Brazil traffic; did you search for such an agreement? A. To my knowledge we never had such an agreement.

Q. Have you ever had a copy of one? A. Not to my knowledge.

256 Q. Have you any information as to whether there is such an agreement in effect? A. I have no information.

Q. Paragraph nine asks you to produce an agreement of July 1908, a copy of which appears as exhibit No. 1 to this petition; did you find that agreement? A. No, sir.

Q. Or any copy of it? A. I have not been able to find any.

Q. You have searched for it? A. Yes.

Q. Did you search for a letter accompanying such an agreement or go through your correspondence to see whether it indicated that such an agreement had been sent you, or a copy of it? A. I did not.

Q. Will you do that? A. I will, yes. 257

Q. Paragraph ten calls upon you to produce the schedule or schedules of rates for the transportation of steerage passengers; have you searched for such schedules? A. I do not recall that such—

MR. BURLINGHAM: You mean the tariff rates?
MR. MONTGOMERY: Steerage tariff.
MR. BURLINGHAM: Passengers?
MR. MONTGOMERY: Yes.

A. I think I can give you our schedule rates for that 258
period.

Q. You haven't them here? A. No.

Q. But you think you can produce them? A. Yes. If we still have them. Maybe we did not preserve them as far back as that. We don't keep old records.

Q. Paragraph eleven calls upon you to produce copies of the minutes of the meetings of the New York Committee? A. We instructed Mr. Goodwin, the secretary of the conference, to supply you with this stuff and I knew it was done.

Q. Mr. Daniels, is the set of minutes kept by the secre- 259
tary complete; does it contain every minute that is furnished to the agents? A. I think it does, but, on the other hand, I don't think that they are minutes; they are only records of the position of the ships and statistics regarding the booking.

Q. Doesn't the secretary furnish the agents with any memoranda of what occurred at other meetings aside from what he enters in these books of his minutes? A. No.

Q. You have those minutes so that you can produce them if we want them—in paragraph 11? A. I am not sure that we have the entire record so far back in our office. 260

MR. KIRLIN: What dates do you want?
MR. MONTGOMERY: For the entire period from January, 1908, to date.

Q. Paragraph twelve calls upon you to produce the monthly statements made by the secretary to the representatives of the different lines; have you those statements? A. May I ask the secretary, who is present, if there ever were such statements made? To my knowledge there never were.

261 Q. Yes.

MR. BURLINGHAM: Were there any monthly statements, Mr. Goodwin?

MR. GOODWIN: No, sir, I don't remember any.

A. (Continuing) There were no monthly statements made.

Q. Mr. Daniels, to refresh your recollection, during the time that Exhibit No. 2, the pooling arrangement, remained in effect, was there not a monthly statement made by the
262 secretary and furnished to the representatives of each of the lines signatories to the agreement Exhibit No. 2 giving information upon which the pool was based? A. The secretary says no, and to the best of my knowledge I know of none.

Q. Paragraph thirteen asks you to produce all annual reports of the secretary, have you found any of those? A. I think there were annual reports made up.

Q. Have you found any? A. If the secretary has submitted the full account ours would only be copies if we had them.
263

MR. KIRLIN: It is the same as Mr. Sparks submitted this morning.

MR. BURLINGHAM: You have called on Mr. Daniels to produce the annual statements, and I produce in response to the subpoena served on Mr. Goodwin five statements dated August 30th, 1909, which are precisely like those produced by Mr. Sparks this morning and marked Exhibit No. 6 for identification.

Q. Over how long a period were these annual state-
264 ments rendered, Mr. Daniels? A. To the best of my knowledge they ran only during the life of the agreement referred to in your petition, Exhibit No. 2.

Q. You mean the pool agreement? A. Yes.

Q. And that was only in force for how long a time? A. One year.

Q. And terminated June 30th, 1909, did it? A. I think so.

Q. So that there was only an annual report made for one year? A. I think so.

Q. Paragraph fourteen asks for the schedule of rates for the transportation of freight and property in effect from January 1st, 1908, to and including the date of the service

of this subpoena; did you find those tariffs or schedules? 265
A. I think they had been produced by the secretary. I could not find any old ones in our office; we do not keep them, but I think the secretary's file supplies you with that information.

Q. Do you remember how many tariffs there have been published during the period named from January 1st, 1908, to this date? A. I do not recall.

Q. About how many tariffs? A. I don't think more than one.

Q. You think the copy of the current tariff and all the 266
preceding tariffs for that period are in the possession of the secretary? A. I think they are, yes.

By Mr. Crim:

Q. Those are the tariffs that you were guided by in the shipment of freight from New York to Brazil points? A. Yes, the line was guided by them.

Q. And you conformed to them? A. Yes.

By Mr. Montgomery:

Q. Paragraph number fifteen asks for the production of 267
all of the contracts made by your firm, or your line, with a number of shippers, naming them; did you search for the contracts called for in that paragraph? A. These contracts were principally constituted by an exchange of letters and I submit copies of the Baldwin Locomotive Works, National Cash Register, W. P. Plummer, United Steel Products Exporting Company.

Q. Are those contracts all that you were able to find in the possession of your firm?

MR. BURLINGHAM: These are living contracts, 268
aren't they?

A. All you ask for; there may be other small contracts.

Q. I mean those called for? A. Of those called for, yes.

Q. And those are all the contracts for example that you were able to find with the Baldwin Locomotive Works in your possession? A. All the active contracts.

Q. I don't mean the ones now in effect, but I mean are those all of the contracts you have made with the Baldwin Locomotive Works that are in your possession; in other words, Mr. Daniels, in trying to observe that sub-

269 poena did you search for all the contracts that you have made with these shippers whether in effect now or not, or did you only search for contracts which are now in force? A. In some instances a contract with W. P. Plummer, dates back to 1908.

Q. That is not an answer to my question. If you will pardon me, I asked you if you have searched for all the contracts with these shippers whether in effect to-day or not; now, please answer that? A. Yes.

Q. And these are all that you have been able to find? A.
270 No, there are some others that I can supply you.

Q. With these shippers? A. Yes, intermediate.

Q. I wish you would bring them; in the meantime we will have these marked for identification.

Marked Petitioner's Exhibit No. 14 to No. 18 for identification.

By Mr. Crim:

Q. Mr. Daniels, when you refer to the secretary, you mean Mr. Goodwin, the secretary of the local conference?
271 A. Of the New York conference.

Q. And I want to call to your attention you were asked by Mr. Montgomery if your company was general agent in this country, in America, for the Lamport & Holt Line, and I understood you limit your answer to this city. Now, I want to show you a paper and ask you if this refreshes your recollection any in that respect? A. Practically.

Q. You were the practical agents for the United States for the Lamport & Holt Line? A. No, we had no jurisdiction over other agents of the Lamport Holt Line in the
272 United States, but we are general agents as we style it for the New York service.

Q. And what part of the United States does that comprise, the New York service, all except New Orleans? A. It comprises general agents for the New York service exclusively, the territory that does business with the New York service, the entire territory that does business with the New York service.

Q. Through the port of New York? A. Yes.

Q. And the only other port in the United States is the port of New Orleans that this line does business through? A. No, the line has agents at Norfolk; they run into Nor-

folk for coals and they have had independent boats not 273
connected with the New York service in other ports through other people that we did not have anything to do with.

Q. Does your territory take in any part of Canada? A. All that contributes to the New York service; if any part of Canada contributes to the New York service we have charge of it.

Q. Have you in your work had shipments to or from Canada? A. Yes, through New York.

Q. And with respect to the Brazil service the only other 274
agent concerned is the agent at New Orleans in the Lamport & Holt trade? A. I might say so practically.

Hearing adourned until Saturday, December 14th, 1912, at 10.30 o'clock A. M.

NEW YORK, December 14, 1912.

Hearing resumed pursuant to adjournment, at 11 o'clock 275
A. M.

APPEARANCES: Same as at last hearing except Senator Spooner, absent.

THE EXAMINER: Senator Spooner having given notice that he would be unable to attend the hearing before 12:00 o'clock, the Examiner directs the hearing to proceed, and, upon consent of the attorneys for Petitioner, the right is reserved to Senator Spooner to interpose any objections he may desire 276
to make to the testimony taken during his absence until the next hearing, and after opportunity to examine the stenographer's minutes of the testimony taken at this hearing in his absence. And further, in the event that the direct examination of any witness is closed at this hearing the right is reserved to Senator Spooner to cross-examine said witness and the attorneys for Petitioner agree to produce such witness for that purpose.

277 LORENZO DANIELS, recalled.

DIRECT EXAMINATION CONTINUED by Mr. Montgomery:

Q. You were asked to produce a copy of a letter dated January 25th, 1906 from Busk & Jevons, or Busk & Daniels, to Lamport & Holt; did you find a copy of such letter? A. Yes.

MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 19 for identification.

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Q. Copy of a letter dated February 2nd, 1906 from Busk & Jevons to Lamport & Holt? A. Yes.

MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 20 for identification.

Q. Letter dated February 9th, 1906 from Busk & Jevons to Lamport & Holt? A. Yes.

Marked Petitioner's Exhibit No. 21 for identi-
279 fication.

Q. Letter dated February 27th, 1906 from Busk & Jevons to Lamport & Holt? A. Yes.

Marked Petitioner's Exhibit No. 22 for identification.

Q. Letter of March 2nd, 1906 from Busk & Jevons to Lamport & Holt? A. Yes.

Marked Petitioner's Exhibit No. 23 for iden-
280 tification.

Q. Copy of letter dated March 16th, 1906 from Busk & Jevons? A. Yes.

Marked Petitioner's Exhibit No. 24 for identification.

Q. Letter dated March 30th, 1906 from Busk & Jevons to Lamport & Holt? A. Yes.

Marked Petitioner's Exhibit No. 25 for identification.

Q. Letter dated April 6th, 1906 from Busk & Jevons to 281
Lamport & Holt? A. Yes.

Marked Petitioner's Exhibit No. 26 for identification.

Q. Two letters under date of June 1st, 1906, one mentioned in paragraph 25 of the subpoena? A. Yes.

Marked Petitioner's Exhibits Nos. 27 and 28 for identification.

Q. Letter dated September 28th, 1906 from Busk & 282
Jevons to Lamport & Holt? A. Yes.

Marked Petitioner's Exhibit No. 29 for identification.

Q. Now, those are all the copies. Now, here is an original letter dated September 7th, 1906 from Lamport & Holt to Busk & Jevons or Busk & Daniels; have you found that letter? A. No, it is not in our files.

Q. Have you searched for that letter? A. Yes. 283

MR. MONTGOMERY: Here is the original of that.

Q. I show you that letter and ask if that is a letter received by Busk & Jevons from Lamport & Holt dated September 7th, 1906? A. Yes.

MR. MONTGOMERY: That letter is in a letter book entitled, L. & H., 25.

Book marked Petitioner's Exhibit No. 30 for identification.

Letter marked Petitioner's Exhibit No. 30-a for 284
identification.

Q. Copy of letter under date of March 12th, 1906 from Busk & Jevons to Lamport & Holt? A. Yes.

Marked Petitioner's Exhibit No. 31 for identification.

Q. Letter under date of January 14th, 1907?

MR. BURLINGHAM: You have it. I have it marked here S. D. M. has it.

285 Q. Is this a copy (Showing to witness)? A. Yes.

Marked Petitioner's Exhibit No. 32 for identification.

Q. I show you what purports to be a copy of a letter to Messrs. Lamport & Holt from Busk & Jevons dated January 14th, 1907, and ask you if that is a true copy of a letter written by Busk & Jevons on that date?

MR. BURLINGHAM: We will admit it is a copy.

286 MR. CRIM: It is admitted by the solicitors for the defendants in this case that for the purposes of trial only, that Exhibit No. 32 is a true copy of the original letter, said letter being entitled "River Plate."

MR. KIRLIN: Counsel for the Prince Line gives notice that if this letter is offered in evidence they will object to it.

MR. BURLINGHAM: And the same of Exhibit No. 38.

287 MR. KIRLIN: As not referring to Brazilian trade.

Q. You were asked to produce copy of a letter dated January 24th, 1907, from Busk & Jevons to Lamport & Holt, did you find that? A. Yes, sir.

Marked Petitioner's Exhibit No. 33 for identification.

Q. I show you what purports to be a copy of a letter written by Busk & Jevons to Lamport & Holt, Liverpool, and
288 also to James Knott, Esq., Newcastle, and dated April 8th, 1907; also a copy of a letter dated July 18th, 1907, written by Busk & Jevons to Lamport & Holt; also letter dated July 26th, 1907, addressed to James Knott, Esq., Prince Line, Limited, Newcastle-on-Tyne, and ask you if those are copies of letters written by Busk & Jevons on those dates? A. I cannot say that I have verified them personally, but there are three pages here of letters, copies that you have asked for, that I am prepared to give you, but I cannot personally verify any of those, but at the same time if you will take the attorneys' statement of the whole business.

MR. CRIM: Will you make an admission, gentle-

men, that the above letters dated April 8th, 107, July 289
18th, 1907, and July 26th, 1907, are correct copies?

MR. BURLINGHAM: We admit they are correct copies.

MR. CRIM: And may be for the purpose of this trial deemed the original letters?

MR. KIRLIN: Subject to the objections which we reserve.

MR. CRIM: As to their competency, materiality and relevancy?

MR. KIRLIN: Yes. 290

Marked Petitioner's Exhibit Nos. 34, 35 and 36 for identification respectively.

Q. I believe you stated, Mr. Daniels, that the letter of April 8th, 1907, was sent both to Lamport & Holt and to James Knott? A. If the letter says so it is right.

MR. KIRLIN: They are addressed to two people; did you send them to your own people or to both?

THE WITNESS: They were sent in those days to both.

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MR. BURLINGHAM: In response to the subpoena, Mr. Daniels produces the following additional letters; I am giving the number of the call in the subpoena and the dates of the letters.

Call No. 34 letter from Busk & Jevons to Lamport & Holt, dated January 31st, 1908.

Marked Petitioner's Exhibit No. 37 for identification.

Call No. 35 letter from Busk & Jevons to Lamport & Holt, dated February 18th, 1908.

Marked Petitioner's Exhibit No. 38 for identifica- 292
tion.

Call No. 36 letter from Busk & Jevons to Lamport & Holt, dated February 7th, 1908.

Marked Petitioner's Exhibit No. 39 for identification.

Call No. 37 letter from Busk & Jevons to Lamport & Holt, dated February 28th, 1908.

Marked Petitioner's Exhibit No. 40 for identification.

Call No. 38 letter from Busk & Jevons to Lamport & Holt, dated February 28th, 1908.

301 Call No. 57 letter from Busk & Daniels to Lamport & Holt, dated August 21, 1908.

Marked Petitioner's Exhibit No. 60 for identification.

Call No. 58 letter from Busk & Daniels to Lamport & Holt, dated September 4th, 1908.

Marked Petitioner's Exhibit No. 61 for identification.

Call No. 59 letter from Busk & Daniels to Lamport & Holt, September 9th, 1908.

302 Marked Petitioner's Exhibit No. 62 for identification.

Call No. 60 letter from Busk & Daniels to Lamport & Holt, September 15th, 1908.

Marked Petitioner's Exhibit No. 63 for identification.

Call No. 61 letter from Busk & Daniels to Lamport & Holt, dated September 15th, 1909.

Marked Petitioner's Exhibit No. 64 for identification.

303 Call No. 62 letter from Busk & Daniels to Lamport & Holt, dated September 18th, 1909.

Marked Petitioner's Exhibit No. 65 for identification.

Call No. 63 letter from Busk & Daniels to Lamport & Holt, dated September 25th, 1909.

Marked Petitioner's Exhibit No. 66 for identification.

Call No. 64 letter from Busk & Daniels to Lamport & Holt, dated October 5th, 1909.

304 Marked Petitioner's Exhibit No. 67 for identification.

Call No. 65, the Government has the letter from Busk & Daniels to Lamport & Holt, dated October 9th, 1908, which is produced and it is admitted that it is a true copy of a letter of that date.

Marked Petitioner's Exhibit No. 68 for identification.

MR. CRIM: And may be deemed an original for the purposes of this trial, subject to the objections to its materiality?

MR. BURLINGHAM: Yes.

MR. BURLINGHAM: (Continuing.)

Call No. 66: Mr. Daniels produces letter from 305
Busk & Daniels to Lamport & Holt, dated October 23rd, 1908.

Marked Petitioner's Exhibit No. 69 for identification.

Call No. 67 letter from Busk & Daniels to Lamport & Holt, dated November 6th, 1908.

Marked Petitioner's Exhibit No. 70 for identification.

Call No. 68 letter from Busk & Daniels to Lamport & Holt, dated December 4th, 1908. 306

Marked Petitioner's Exhibit No. 71 for identification.

Call No. 69 letter from Busk & Daniels to Lamport & Holt, dated November 13th, 1908.

Marked Petitioner's Exhibit No. 72 for identification.

Call Nos. 70, 71 and 72, the Government has the letters dated December 18th, 1908, December 22nd, 1908, and January 4th, 1909, and it is admitted that those are true copies of the original letters of those 307
dates and may be deemed the originals for the purposes of this trial, subject to the objections to their materiality.

Letter of December 18th, 1908, marked Petitioner's Exhibit No. 73 for identification.

Letter of December 22nd, 1908, marked Petitioner's Exhibit No. 74 for identification.

Letter of January 4th, 1909, marked Petitioner's Exhibit No. 75 for identification.

Call No. 73, Mr. Daniels produces two cablegrams from Busk & Daniels to Lamport & Holt under the 308
name of Nifmore, dated respectively December 30th and December 31st, 1908.

Cable of December 30th, 1908, marked Petitioner's Exhibit No. 76 for identification.

Cable dated December 31st, 1908, marked Petitioner's Exhibit No. 77 for identification.

Call No. 74 letter from Busk & Daniels to Lamport & Holt, dated January 5th, is produced by the Government and it is admitted it is a copy of the letter of that date and it may be deemed an original for the purposes of this trial subject to the objections as to

309 Marked Petitioner's Exhibit No. 78 for identification.

Call No. 75, letter from Busk & Daniels to Lamport & Holt, dated January 11th, is produced by the Government and it is admitted it is a true copy of a letter of that date and may be deemed an original for the purposes of this trial, subject to objections to its materiality.

Marked Petitioner's Exhibit No. 79 for identification.

310 By Mr. Montgomery:

Q. You were asked to produce a letter from Lamport & Holt to Busk & Jevons under paragraph 76, dated January 1st, 1909, the letter referred to in the letter of Busk & Jevons or Busk & Daniels to Lamport & Holt of January 11th, 1909, did you find the letter from Lamport & Holt? A. I have not been able to find it.

Q. What search have you made for that letter? A. A general search throughout all the documents we have where it would be likely to be.

311 Q. How were those letters kept? A. They are generally made up in a book at the end of the year.

Q. Was that kept in a letter book similar to the letter book marked No. 30 for identification? A. Yes.

Q. For how long a time have you kept your incoming letters from Lamport & Holt in books similar to this? A. I should say about twenty years; it is a very long time.

Q. For about twenty years? A. I should think so.

Q. Is every letter received from Lamport & Holt by your firm pasted into one of these books? A. At the end of the

312 year they are supposed to represent what letters we have. I presume errors creep in.

Q. You did not answer my question. Is every letter received from Lamport & Holt by Busk & Daniels pasted into a book of this character upon its receipt or shortly thereafter? A. It is not.

Q. What letters of Lamport & Holt received by you are selected to be pasted in these books? A. There are not letters selected; those books are made up at the end of the year.

Q. How are the letters filed from Lamport & Holt when they are received? A. They are filed in a cabinet, the usual filing cabinet.

Q. In a vertical filing case? A. Something on that order. 313

Q. And then you say at the end of the year— A. At the end of the year they are made up in book forms for record.

Q. That is to say, they are taken from the filing cabinet and pasted in these books? A. Yes.

Q. Pasted in these books? A. Yes.

Q. And are all the letters in the filing cabinet taken and pasted into books? A. Now, wait a minute; I may have made a mistake in the instance of Lamport & Holt. That is our general custom in the office. Lamport & Holt's pa- 314
pers may be pasted in as they go along.

Q. From day to day? A. From day to day.

Q. So that you do not— A. Will you allow me to look at the book to make sure? (After examination.) I think they are pasted in from day to day.

Q. You think these are pasted in from day to day? A. Yes.

Q. Under whose direction? A. The office porter.

Q. What is his name; who was the office porter in charge of that book in the beginning of the year 1909? A. I don't remember. 315

Q. Who is now? A. The porter is a man named Weil or Weils.

Q. You don't know his full name? A. No

Q. How long has he been with you? A. I think two or three years, or maybe longer; I won't be positive.

Q. You cannot remember who preceded him in that work? A. A man named Brewster.

Q. How long was he there? A. He was there for a good number of years.

Q. What became of him? A. He is still attached to the 316
office in a sort of pension position.

Q. What is his full name? A. I don't know.

Q. Do you remember how long he was there? A. He has been there for a great many years.

Q. Do you know how long he was in the capacity of office porter? A. I should say twenty years.

Q. Then he must have been the man who was in charge of this work on January 1st, 1909 and during that period immediately after? A. I think probably.

Q. You think probably he was? A. Yes.

Q. Let me understand you, Mr. Daniels; are all the letters received from Lamport & Holt pasted in [illegible]

317 when they arrive at about the time of their arrival or receipt? A. Not necessarily; they may be kept on the files in the office for answering. When the office is finished with them they are handed to the porter to file; that is the custom.

Q. Do you think your office has not finished with this particular letter? A. A great many years ago, and I should think they are finished with it a long time ago.

Q. What do you think became of it? A. I haven't the remotest idea.

318 Q. Has this challenged your curiosity at all; have you any notion about what might have become of it? A. I have not especially. It was so long ago. It is a dead issue, and I haven't given it any concern especially.

Q. Mr. Daniels, have you found the letter book covering the period of January 1st, 1909 and a few months succeeding, or the period of time including January 1st, 1909. I ask you, Mr. Daniels, if you have found the letter book of incoming letters from Lamport & Holt covering the period in which January 1st, 1909 is included? A. You ask me that question and you have a list of all the books that came

319 back from the District Attorney's office; and all have been turned over to you by our lawyer.

Q. For the purpose of complying with this subpoena have you searched for the book covering that period? A. I think you have it.

Q. I ask you if you have searched for that book? A. I think you have it.

Q. What makes you think we have it? A. Because I am quite sure you have if you will let me look at your data.

Q. What data? A. The list of books we sent down to the

320 lawyer's office.

Q. What lawyer's office? A. Mr. Burlingham's office.

Q. When? A. On receipt of the subpoena to have these letters made up from.

MR. MONTGOMERY: The witness says you have these books (addressing Mr. Burlingham).

MR. BURLINGHAM: I will state that Mr. Daniels sent to us a large number of books and we notified the Government that we had them there and Mr. Montgomery attended yesterday and had full access to them, and at any time you have full access to them. They are in our office now and you did not

ask us to bring them down this morning. Whether 321
that particular period is covered or not you probably know.

MR. BURLINGHAM, JR.: There are both inward and outward letter books in our office.

By Mr. Crim:

Q. Mr. Daniels, do you know whether all the letters received from Lamport & Holt in the manner you have indicated are in books similar to Exhibit No. 30? A. That is the custom in the office, yes.

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Q. And have you any other files in the office containing letters received from Lamport & Holt? A. There might be some letters that were not filed pertaining to some special matter that would get into other channels, but those would be practically mislaid; the intention is to file every letter in the book.

Q. As a matter of fact do you know whether Busk & Daniels have another file in which they keep special letters or file other than the file similar to Exhibit No. 30 for identification? A. I won't be positive without ascertaining from the clerks in the office.

323

Q. Of your knowledge you don't know? A. No; I have no filing myself to do.

Q. And when you received this subpoena you sent all of the books and papers to Mr. Burlingham's office? A. Yes.

Q. And have you gone through those books and papers with Mr. Burlingham? A. Our clerk has.

Q. So it is possible that the letter called for in the subpoena is contained in the books in Mr Burlingham's office? A. I should think if it was there they would find it.

MR. CRIM: I move to strike that out.

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Q. So far as you know the letter may be in the books in Mr. Burlingham's office? A. Yes.

Q. And you have no objection to the Government seeing those books and letters? A. Absolutely not. We desire you to make the fullest—all the information—we want to get this matter straightened out.

Q. Will you produce those books and letters at this room? A. Yes. sir.

MR. BURLINGHAM: I ask the Government to refer definitely to the books they want.

325 MR. MONTGOMERY: Covering the period January 1st, 1909.

MR. CRIM: The witness says he has no objection to the Government seeing the books and papers we have been discussing for the past few minutes and has no objection to producing them in this room.

Q. How many books did you take to Mr. Burlingham's office, or send to Mr. Burlingham's office? A. Apparently books numbers 34 and 35, Lamport & Holt inward letters.

326 Q. Did you take any books containing outward letters? A. Letters to Lamport & Holt books numbers 16, 17, 18, 19, 20 and 22.

Q. What period of time did these letters cover, Mr. Daniels? A. They were supposed to cover the entire period asked for in this subpoena.

Q. Mr. Daniels, whom do you hold responsible for the files in your office? A. In case of—I should say the porter's department.

Q. And all letters go to the porter? A. All letters go to

327 the porter's department.

Q. Including the letters from Lamport & Holt? A. Yes.

Q. Have you a private file? A. I personally have not.

Q. Has any member of your firm a private file with regard to Brazil business? A. Not to my knowledge.

Q. Now, Mr. Daniels, with regard to call No. 77 in your subpoena?

MR. BURLINGHAM: In response to call No. 77, Mr. Daniels produces letter from Busk & Daniels to Lamport & Holt, dated February 9th, 1909.

328 Marked Petitioner's Exhibit No. 80 for identification.

Call No. 78 letter from Busk & Daniels to Lamport & Holt, dated February 11th, 1909.

Marked Petitioner's Exhibit No. 81 for identification.

Call No. 79 letter from Busk & Daniels to Lamport & Holt, dated February 16th, 1909.

Marked Petitioner's Exhibit No. 82 for identification.

Call No. 80 letter from Busk & Daniels to Lamport & Holt, dated February 26th, 1909.

Marked Petitioner's Exhibit No. 83 for identification. 329

Call No. 81 letter from Busk & Daniels to Lamport & Holt, dated March 5th, 1909.

Marked Petitioner's Exhibit No. 84 for identification.

Call No. 82 letter from Busk & Daniels to Lamport & Holt, dated April 23rd, 1909, Mr. Daniels produces a copy of the letter made from the books with an omission of some irrelevant matter approved by Mr. Montgomery yesterday at our office. 330

Marked Petitioner's Exhibit No. 85 for identification.

Call No. 83, the Government has a letter of April 27th, 1909, from Busk & Daniels to Lamport & Holt, and it is admitted as a true copy and may be deemed an original for the purposes of this trial, subject to the objections to its materiality.

Marked Petitioner's Exhibit No. 86 for identification.

Call No. 84, the Government has a letter dated May 7th, 1909, from Busk & Daniels to Lamport & Holt and it is admitted that it is a true copy of a letter of that date and may be deemed an original for the purposes of this trial, subject to the objections to its materiality. 331

Marked Petitioner's Exhibit No. 87 for identification.

Call No. 85, Mr. Daniels produces copy of the papers referred to in Exhibit No. 87 for identification, namely, a cable from Busk & Daniels to Nifmore of May 4th, 1909. 332

Marked Petitioner's Exhibit No. 88 for identification.

An extract from the cable from Busk & Daniels to Nifmore dated May 5th, 1909.

Marked Petitioner's Exhibit No. 89 for identification.

Mr. Crim: It is understood that all of these cables are to be deemed original with the exception of the objection as to the materiality?

Mr. Burlingham: Yes.

333 MR. BURLINGHAM: (Continuing.)

Call No. 8, the Government has the letter dated May 14th, 1909, from Busk & Daniels to Lamport & Holt and it is admitted that it is a true copy of a letter of that date and may be deemed an original for the purposes of this trial, subject to the objection to its materiality.

Marked Petitioner's Exhibit No. 90 for identification.

Call No. 87, Mr. Daniels produces copy of cable referred to in Exhibit for identification No. 90.

334 Marked Petitioner's Exhibit No. 91 for identification.

Call No. 88, Mr. Daniels produces copy of cable referred to in Exhibit No. 90 for identification, dated May 25th, 1909, which it is admitted is a true copy of a cable of that date and may be deemed an original for the purposes of this trial, subject to the objections to its materiality.

MR. MONTGOMERY: The Government has a copy of an extract; that is all we care to introduce.

335 MR. BURLINGHAM: I will change my statement to the Government has a copy of the parts of the letter it wishes to have marked and we will admit that it is a true copy of the original and may be deemed an original for the purposes of this trial, subject to the objections to its materiality.

Marked Petitioner's Exhibit No. 92 for identification.

Call No. 89, Mr. Daniels produces copy of letter from Busk & Daniels to Lamport & Holt, dated July

336 9th, 1909.

Marked Petitioner's Exhibit No. 93 for identification.

By Mr. Crim:

Q. Mr. Daniels, I show you exhibit No. 93 for identification, the first sentence, and in paragraph ninety of the subpoena *duces tecum* you were directed to produce the minutes referred to in the first sentence of exhibit No. 93, have you produced them? A. I think you have that record in the set of minutes furnished by the secretary. I have not brought a copy of them, and I am quite sure you have them on your record.

Q. Is this the book you refer to as containing the minutes of the secretary? (Showing witness book.) A. I think it is, to the best of my knowledge. 337

Q. Will you look at page 74, dated July 7th, 1909, and tell me what the entries refer to, if you know? A. I cannot remember positively.

Q. Do they refer to a meeting of the New York conference of the defendant lines? A. I should judge so.

Q. And I call your attention to this sentence: "The agents met, but adjourned as there was no business to consider." Is that a part of what you enclosed in the letter of July 9th from Busk & Daniels to Lamport & Holt? A. Without positive knowledge I should think that a copy of that was referred to in the letter. 338

Q. Was that the ordinary course of business with respect to these conference meetings? A. Yes.

Q. Paragraph 504, "Lloyd Brazileiro still advertise S. S. Breconshire, July 14th, S. S. Polarstjernen for 28th July. Both steamers are here but neither have started to load. The Lloyd appear to be quoting 14 cents now on oil Topajoz sailed from Norfolk on July 4 with 1800 tons cargo coal; also loaded at Norfolk 1700 bunkers." Was it a part of your duty to include the matter which I have just read in sending minutes to Lamport & Holt? A. I had no special duty in connection with it. 339

Q. Then you would say that your duty with regard to sending minutes ended with the first sentence that I read? A. No.

Q. Namely, "The agents met but adjourned as there was no business to consider?" A. No; we would send a copy of whatever the secretary gave us as a report of that date. 340

Q. And ordinarily did the secretary report to you matters concerning the Brazilian Lloyd Line as indicated on this page? A. Wherever those notices are so inserted.

Q. And when did that course of trade begin of sending minutes of the meetings to Lamport & Holt? A. Whenever there were any such reports, or copies of such reports we always sent them.

Q. From the beginning of the conference until the present time? A. I should say so. Whenever we have anything of that character we send it forward.

MR. BURLINGHAM: Call No. 91, Mr. Daniels pro-

341 duces letter from Busk & Daniels to Lamport & Holt dated August 27th, 1909.

Marked Petitioner's Exhibit No. 94 for identification.

By Mr. Montgomery:

Q. You were asked to produce a minute book containing the minutes of the New York conference from January 1st, 1908 to July 29th, 1908; did you find such book? A. I did not.

342 Q. Were any minutes kept for that period? A. I could not answer positively. You must have the record if there were.

By Mr. Crim:

Q. What is your best information with regard to whether any minutes were kept during that period? A. I don't recollect at all, but if the minutes are not in sequence in your records there were no minutes for the period.

By Mr. Montgomery:

343 Q. To refresh your recollection I show you this book that appears to contain the minutes from July 29th, 1908 to April 28th, 1909 of the New York conference, and call your attention to minutes for July 29th, 1908 at which you appear to have been in the chair, which recites, Mr. Daniels was in the chair, doesn't it? A. I presume so.

Q. Can you tell whether that was the first meeting of the conference? A. I cannot say positively, but I presume if it is the first record on file you can take it as such.

Q. Can you by looking these minutes over to refresh your
344 recollection tell whether that was the first meeting of the conference? A. I think there would be no way of my telling it positively except from inference that it was the first meeting.

Q. If you were told that the minutes of that meeting are the earliest minutes produced by the secretary, Mr. Goodwin, would you say that that probably was the date of the first meeting of the conference? A. Yes.

Q. Of which minutes were kept? A. Yes.

Q. Previous to the meetings of which minutes in this form were kept were there any other meetings of the agents of the Lamport & Holt, the Prince Line and the

German lines here—just previous to it? A. don't think so; not to my recollection.

Q. Where there any agreements entered into between the agents in the period just previous to July 29th, 1908; what I am getting at is this, Mr. Daniels: in the period of about 1907 there was open competition in this traffic, was there not? A. There was a rate war, I think.

Q. That is to say, there was no cooperation among the lines at all in this traffic? A. That is to say that the lines took business at a nominal loss, but practically at figures that did not pay the loading expenses.

Q. Did they do that without consulting one another; the agents do that without consulting one another? A. Oh, decidedly.

Q. And for what period of time? A. I don't recollect definitely; it was during that period sometime.

Q. Around 1907 and to sometime in 1908, wasn't it? A. If my recollection is right.

Q. Lamport & Holt as a line was one of the lines that was acting independently during that period, was it not? A. Yes.

Q. Without consultation with other lines? A. If I remember correctly.

Q. At what time in 1908 did Lamport & Holt's agents here cease to act independently of the other agents and commence to cooperate with them in regard to this traffic? A. I should gather about the first of July, in July sometime.

Q. You think not before that? A. To the best of my knowledge not before that.

Q. You think that there was no time when there were informal agreements of which no minutes were made? A. If there were my recollection does not recall that.

By Mr. Crim:

Q. Mr. Daniels, I show you Exhibit No. 1 of the petition in this case and ask you to refresh your recollection with regard to when the cooperation between the lines began. You have just stated it was about July; I call your attention to Exhibit No. 1 of the petition, to paragraph ten of the exhibit, does that refresh your recollection as to the time when the cooperation began between the lines? A. I should gather that it must have commenced the date of the signature.

349 MR. KIRLIN: Look at it, the end of it.

Q. About the 14th of February, 1908? A. My recollection does not recall very clearly the definite conditions at that time, but I should judge for your purpose, and for the inference, that if there were such negotiations going on there naturally would be an armistice, as they call it in Bulgarian territory.

Q. And that those negotiations began somewhere about February 14th, 1908? A. That is the date on the paper so
350 that is what I have got to go by.

By Mr. Montgomery:

Q. Mr. Daniels, you were asked to produce in paragraph 93 the minutes of the London conference from 1908, January 1st, 1908 to the date of the service of this subpoena; did you find those minutes? A. No, sir.

Q. Did you find any of them? A. I don't think so.

Q. Did you hunt for them? A. Yes, sir.

Q. Don't you know whether you found any? A. I found
351 none personally.

Q. Did you search personally? A. I don't know where to look for them is the truth of the matter; they must have been amongst our documents or abstracts or they would not be anywhere.

Q. Were they always sent to you, every meeting of the London conference? A. No.

Q. How frequently did you receive minutes of the London conference? A. We never received to my knowledge anything like the full minutes; occasionally we might get an abstract.

352 Q. Have you looked up abstracts of that kind, you say? A. They would be amongst our papers.

Q. And who made the search besides yourself? A. One of our clerks in the office.

Q. What is his name? A. Mr. Scott.

Q. What is his full name? A. I don't recall.

Q. He made the search under your direction? A. Yes, sir.

Q. Did he report to you? A. Yes.

Q. That he had not found them? A. He reported to me what he had found—

Q. Did you ask him expressly whether he found any 353
London minutes? A. And also what he had not found.

Q. Did he expressly say he had not found any of the London minutes? A. Yes.

Q. Where do you say those are filed. A. There were no files especially; they were amongst the ordinary correspondence.

Q. Would they be in the letter books of Lamport & Holt, the incoming letters? A. I should think they would pass through with them.

Q. Would they be embodied in the letter, or would they 354
be enclosed? A. As I recollect we have only seen abstracts of one or two occasional periods.

Q. Only minutes of one or two meetings? A. Abstracts.

Q. Of one or two meetings? A. That I recollect.

Q. During this entire period, Mr. Daniels? A. As I recollect; it may amount to more.

Q. Who else in your firm would see them besides yourself? A. Practically only myself.

Q. Would Mr. Busk see them? A. He would see them in the ordinary course. All of our letters are passed 355
around through our office to the heads of all the departments.

Q. Mr. Busk would know it? A. Mr. Busk would see the letter.

Q. If there are any of those minutes are they in the letter books? A. I should think you would find them there if there were any.

Q. You have no objection to our looking through for them? A. No, sir.

Q. Did you find the letter from Busk & Daniels, or Lorenzo T. Daniels to Lamport & Holt dated about April 356
6th, I think, or April 4th, relating to the shipment of coffee from Brazil by Arbuckle Brothers? A. Yes.

Marked Petitioner's Exhibit No. 95 for identification.

Q. Did you find a cablegram dated about April 14th from Arthur Cook to Busk & Daniels with regard to Arbuckle? A. Yes.

Marked Petitioner's Exhibit No. 96 for identification.

357 Q. Now, Mr. Daniels, I understood you to testify that you took to Mr. Burlingham's office certain books that relate to matters called for in this subpoena? A. I sent them.

Q. Now, can you state what books of incoming letters from Lamport & Holt you took to Mr. Burlingham's office? A. I have not taken any books.

Q. What books did you send there? A. The only record that I have in front of me is letter books 34 and 35.

Q. Is that a record made by yourself? A. It is not.

358 Q. Who did make it? A. I don't know.

Q. I am not asking you about somebody else's record, I am asking you about your recollection? A. It is a memorandum given me by——

Q. Never mind that, about that memorandum; what books—according to your recollection what books did you send up to Mr. Burlingham's office; did you see the books that went up there? A. I did not.

Q. And they were not sent there under your immediate supervision? A. Yes, I told them to send them all up.

Q. To send them all up? A. Yes, sir.

359 Q. For what period? A. For the period that may be covered and required from the subpoena.

Q. Did you ask that all letter books of incoming letters from Lamport & Holt, from January 1st, 1908 to the date of the service of this subpoena be sent? A. I did not use those words. I told them to send all the incoming letter books that were required to fulfill your subpoena and Mr. Burlingham, our lawyer's requirements.

Q. Then you don't know how many were sent? A. No, I do not personally.

360 Q. If the letter book covering the period including January 1st, 1909 is included is not among those sent to Mr. Burlingham it must be in your office, mustn't it? A. There are some of them in the District Attorney's office.

Q. Do you know what ones are in the District Attorney's office? A. Yes, I have a list of them somewhere.

MR. BURLINGHAM: No. 34, December 1st, 1909 to April 1910, and No. 35, letters from May 2nd, 1910 to January 1911, look in the back of them and you will see. Will you send them to my office, Mr. Daniels, book No. 33?

THE WITNESS: Yes, sir. 361

MR. BURLINGHAM: There are three things you called for at the last hearing in your testimony; he has got them now. I think at the last meeting you asked Mr. Daniels to procure complete copies of the contracts some of which he produced the other day. I have them here now and there they are. (Handing papers over to Mr. Montgomery.) I produce several contracts as follows:

One, contracts with W. P. Plummer, Esq.

Marked Petitioner's Exhibit No. 97 for identification. 362

Another contract with Burnham-Williams & Company.

Marked Petitioner's Exhibit No. 98 for identification.

Contracts with the United States Steel Products Export Company.

Marked Petitioner's Exhibit No. 99 for identification.

Contract with the Singer Manufacturing Company. 363

Marked Petitioner's Exhibit No. 100 for identification.

Contracts with National Cash Register Company.

Marked Petitioner's Exhibit No. 101 for identification.

MR. BURLINGHAM: Then you asked for a copy of a letter from Lamport & Holt enclosing certain circulars to shippers, and Mr. Daniels produced it. A letter dated the 18th of July, 1908, and addressed to 364 Busk & Jevons by Lamport & Holt.

Marked Petitioner's Exhibit No. 102 for identification.

MR. BURLINGHAM: The Government also asked for the steerage rates on the Lamport & Holt Line and Mr. Daniels produces three circulars dated respectively 11/15/10, May 20/11 and 11/1/12.

Marked respectively Petitioner's Exhibit numbers 103 for identification, No. 104 for identification, and No. 105 for identification.

MR. BURLINGHAM: Mr. Daniels also produces in

365 response to the request of the Government asking for an itinerary of advertisements of the Lamport & Holt Line with list of proposed sailings for the year 1909.

Marked Petitioner's Exhibit No. 106 for identification.

Also proposed sailings for 1913.

Marked Petitioner's Exhibit No. 107 for identification.

MR. BURLINGHAM: All of these that we said we
366 would produce we have not got, but will have them copied in the course of a day or two and get them down to you.

BY MR. BURLINGHAM:

Q. Will you make as general search as you possibly can for a letter from Lamport & Holt to your firm dated January 1, 1909? A. I will.

Hearing adjourned until Thursday, December 19th, 1912,
367 at 10:30 o'clock A. M.

New York, December 19, 1912.

Hearing resumed pursuant to adjournment.

APPEARANCES: Same as at last hearing.

THE EXAMINER: Senator Spooner is in Washington and unable to attend the hearing to-day, and upon consent of the attorneys for petitioner, the right
368 is reserved to Senator Spooner to interpose any objections he may desire to make to the testimony taken during his absence until the next hearing, and after opportunity to examine the stenographer's minutes of the testimony taken at this hearing in his absence. And further, in the event that the direct examination of any witness is closed at this hearing the right is reserved to Senator Spooner to cross-examine said witness and the attorneys for petitioner agree to produce such witness for that purpose.

MR. BURLINGHAM: In answer to paragraph 76 of

the subpoena to Mr. Daniels, which calls for a letter 369
from the Lamport & Holt Line to Busk & Jevons, under date of January 1st, 1909, I wish to state that Mr. Daniels has made a search and has found the original letter, which he produces.

Marked Petitioner's Exhibit No. 108 for identification.

MR. BURLINGHAM: Mr. Daniels has also called my attention to the fact that the firm of Busk & Jevons terminated December 31, 1908, and the firm of Busk and Daniels started January 1st, 1909, not as ap- 370
pears in the record as 1908.

Lorenzzo Daniels recalled.

Direct Examination continued by MR. CRIM.

Q. Mr. Daniels, your firm is one of the largest in the City of New York in this line of business, isn't it? A. Amongst the large firms. 371

Q. What are your particular duties in this firm? A. More especially in connection with the shipping department, but general knowledge of the firm's business, of course.

Q. Are you the senior member of the firm, the longest in term of service? A. Longest in term of service? Well, the present firm started, Mr. Busk and myself, at the same time, so there is practically no seniority.

Q. You have been in the ship brokerage business for a great many years? A. About thirty odd years, yes.

Q. Has Mr Busk been in that business that long? A. I should say not, no. 372

Q. What are Mr. Busk's particular duties in this firm? A. He gives more attention to the merchandise business and the office.

Q. That is, buying and selling merchandise? A. Yes; to the merchandise department.

Q. And the importation of merchandise on his own account or the account of Busk & Daniels? A. Yes.

Q. When the firm was Busk & Jevons what were the duties of Mr. Jevons? A. Mr. Jevons was the senior partner.

Q. Was his work concerned with the importation of

373 merchandise as differentiated from your work in the firm? A. No, I think of late years he sort of supervised the general—took an interest in all the departments.

Q. Did Mr. Jevons attend the meetings of the New York Committee of the Brazil Conference? A. On some occasions I think he has attended.

Q. Has your concern been represented there by Mr. Busk at times? A. I do not recall whether Mr. Busk has ever attended or not. If at all, very, very rarely.

Q. Has any other person represented your concern at
374 these meetings? A. At different times we have used different clerks, as the case may be; nobody special.

Q. Will you name those clerks? A. Mr. David Cook, Mr. Gein, and Mr. Taintor.

Q. What is Mr. Gein's first name? A. I think it is W., without being sure whether it is his middle initial or not; I won't be positive.

Q. Is he the Gein mentioned in the petition in this case? A. Yes.

Q. Now, your transactions on behalf of the Lamport & Holt Line are they carried on between representatives of
375 that concern here and your firm, or do you correspond across the Atlantic? A. They are entirely abroad.

Q. Entirely abroad? A. Reach them by correspondence.

Q. And they have no other representative at New York? A. No.

Q. What data do you send them or did you send them during the period that the pooling agreement, Exhibit No. 2, in the petition was in effect—what data did you send to their offices abroad with respect to the ships? A. Without having actual data in front of me, I think for your
376 purposes I will make a general answer that I sent copies of everything we received.

Q. Of everything you received? A. Yes.

Q. Now, what would you receive, generally? A. You have the record from the secretary he made out.

Q. You sent all of the records and documents that you received from the secretary to Lamport & Holt abroad? A. Yes.

Q. With regard to the vessel itself, did you send the manifest—copy of the manifest? A. Yes.

Q. What other entries would you send abroad with regard to the sailing of the vessel? A. All the data.

Q. Well, what is that data? A. If you will particularize 377
any of it I will answer you.

Q. I am trying to ascertain in as great particularity as possible what data are made out when a vessel sails from here to Brazil? A. Practically nothing but the manifest.

Q. Is there anything but the manifest?

MR. BURLINGHAM: Is your question what goes with the ship?

MR. CRIM: No, what he reports to the office abroad; what data he sends there.

378

Q. What information you send there? A. Allow me to presume; your question is so general it is hard to answer, but the data of the crew, the amount of coal it had on board, all data pertaining to the voyage of the steamer would be sent abroad.

Q. Would you send copies of the bills of lading? A. No.

Q. You would keep them in your office here? A. They go with the ship.

Q. You keep a copy, do you not? A. I am not positive. I think in one trade we did, whether it was in Brazil or 379
another trade I dont' know. It is not customary to keep copies in the office.

Q. You sent copies of the invoices to Lamport & Holt? A. We have nothing to do with the invoices; those are made out by the merchants.

Q. How many copies of a manifest would you send abroad during this period of 1908 and 1909? A. A single copy. When you say abroad, where do you mean?

Q. That is sent to Lamport & Holt? A. A single copy.

Q. And the data that you receive from Mr. Goodwin, 380
the secretary of the New York Committee, do you send more than one copy? A. One copy to Lamport & Holt only.

Q. Only one? A. Yes.

Q. Was there any time that you sent more than one copy to Lamport & Holt? A. I would not be positive; there may be a second copy sent. What have you reference to particularly?

Q. Well, the minutes of the meetings of the New York Committee? A. We receive a second copy; whether it goes to Lamport & Holt or whether it is sent to the committee itself I could not say. I think it goes to Lamport & Holt.

381 Q. This second copy, you enclose them both in the same envelope, the same package? A. If they are sent to Liverpool. That is a point I don't know myself personally because it does not come under my exact attention, but if it is sent to Liverpool it would go in the same envelope.

Q. Have you continued to send this data to Lamport & Holt since the pooling agreement, Exhibit No. 2 in the petition, became inoperative. A. What data do you mean?

Q. The minutes of the meetings of the New York Committee? A. The records of the meetings are forwarded
382 as received.

Q. Two copies? A. Two copies.

Q. And do you send one copy of the manifest or two? A. To the best of my knowledge only one.

Q. Has your course of business with respect to what you report to Lamport & Holt changed in any particular since that contract expired in 1909—I mean exhibit No. 2 in the petition? A. Everything pertaining to an agreement has ceased; there has been no agreement since that date to require any data.

Q. I doubt if you comprehend just what I mean. Has
383 your course of business with respect to the transactions between your concern and Lamport & Holt with respect to sending reports to them changed in any particular? A. The actual reports we receive from the secretary and the weekly reports of the different steamers we sent to Lamport & Holt as received.

Q. And one copy of the two which you send to Lamport & Holt is submitted to a gentleman by the name of Woods? A. No—at the moment, because if you will allow me, I will straighten you out. Mr. Woods—they used to go to Mr.
384 Woods, but some year and a half ago it was, if I remember correctly, Mr. Woods resigned his position and joined the Lamport & Holt staff in London as the manager there.

Q. And who is Mr. Woods' successor? A. I don't know.

Q. What other ports, besides ports in Brazil does Lamport & Holt New York-Brazil Line touch in South America? A. Only those. Some of the boats proceed through to the River Plate.

Q. Do you know which boats proceed through to the River Plate? A. We have a fortnightly service that touches at Brazil ports and proceeds to the River Plate.

Q. And do your boats touch any other ports than the

River Plate points? A. We touch in the West Indies, occasionally 385

Q. And how long have your boats been going—have these Lamport & Holt boats been going to the River Plate?

MR. KIRLIN: We object to any enquiries about the River Plate as outside of the issues in this case, immaterial and irrelevant.

A. I will have to look up the records, but we have been going for a good many years.

Q. Since 1901? 386

MR. KIRLIN: All this about the River Plate to be subject to the same objection?

MR. CRIM: It may. It is my understanding that your general objection of last week at the last hearing covers the River Plate situation.

A. I made an error in estimating the date when my firm started. If you will allow me to refer to an actual date, it would be much better. They had been running a number of years and I would prefer to give an actual rather 387 than a hazardous answer.

Q. Do you know what ports in South America other than the Brazilian ports the German lines touch?

MR. KIRLIN: I make an objection on behalf of Senator Spooner on the same grounds.

A. I do not feel competent to answer. Their line is so large and has so many ramifications that my answer would not be intelligent unless I posted myself.

Q. Did you know in 1908 and 1909? A. Again I cannot 388 answer intelligently.

Q. Do you know what ports other than the Brazilian ports the Prince Line touches in South America? A. Some of their boats proceed through to the River Plate from New York.

Q. Do they touch any other ports? A. They may, but I am not competent to answer the question intelligently.

Q. Are you able to tell me what lines other than the three defendants in this case operate between New York and the River Plate? A. The Barbour Line, the Houlder Line, it has another name, I don't recall, the Houston Line, the

389 Norton Line: I think that is all, with the exception of those already mentioned.

Q. And do those lines touch Brazil ports? A. The Norton Line very occasionally, and I think some of the lines north bound do.

Q. Do you recall which ones? A. There is no regularity as I understand it in that matter.

Q. About how many sailings a year do the Lamport & Holt boats make to the Plate ports? A. We nominally run a fortnightly line; you have our schedule given you
390 in our testimony the other day.

Q. And there is a New York Committee with respect to the Plate service?

MR. BURLINGHAM: Objected to as irrelevant and immaterial.

A. I should not style it in those terms.

Q. Have you attended any meetings in New York City at which there were representatives of the lines you have mentioned and at said meetings there were discussions with
391 respect to the Plate service?

MR. KIRLIN: If what you are after is to know whether at the Brazil Conference meetings representatives attended who were representatives of the lines operating in the River Plate service and at such meetings discussed matters of common interest, that I agree is legitimate, if that is the object.

MR. CRIM: That is not the question.

(Question read.)

MR. BURLINGHAM: May I ask, Mr. Crim, do you
392 refer to the meetings of the Brazilian Conference?

MR. CRIM: I do not.

MR. BURLINGHAM: Then, I object on the ground that the inquiry is irrelevant and immaterial and not within the issues and I ask that the witness should not answer pending a ruling by the Court.

Q. Was the Plate service discussed at the meetings of the New York Committee of the so-called Brazil Conference during the period from 1908 to 1909 when the pooling agreement was in effect, Exhibit No. 2 in the petition? A. Not to my knowledge.

Q. To your knowledge the Plate service was never mentioned at the meetings of the New York Committee of the Brazil Conference? A. Not to my remembrance. 393

Q. Now, the vessels which operate from New York to points in Brazil during 1908 and 1909, when Exhibit No. 2 of the petition was in effect, carried merchandise for Plate ports, did they not? A. I think so; but may I refresh my memory to be positive? If they went through to the Plate in those boats, which to my recollection they did, they would carry cargo for the Plate ports.

Q. And what were the commodities that ordinarily went from New York to the Plate ports during this period of 1908 and 1909 when Exhibit No. 2 of the petition was in effect? 394

MR. BURLINGHAM: I object as immaterial and irrelevant, but I do not ask that this be certified, so he may answer it.

A. Principally manufactured goods I should say.

Q. Machinery? A. Machinery would not be likely to go on the passenger boats. Wait a minute, if the big boats went through they could carry machinery, that is right. 395

Q. And substantially the same sort of merchandise that went to Brazil?

MR. BURLINGHAM: The same objection. This is all taken subject to that objection.

A. With the exception of the agricultural machinery and machinery that is especially adapted to the needs of the different sections of the country, yes; with those exceptions. 396

Q. And was there any arrangement between your concern or the Lamport & Holt Line with any other line with regard to the Plate service?

MR. BURLINGHAM: Objected to, and I ask that this question be certified.

MR. KIRLIN: I join in the objection.

MR. BURLINGHAM: Don't answer that question.

Q. Was there any arrangement with respect to the number of boats that should continue from Brazil to the Plate

397 or from New York to the Plate during the time that the Pooling Agreement Exhibit No. 2 of the petition was in effect?

MR. BURLINGHAM: The same objection. Please do not answer. The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Q. Was there any arrangement between your concern or representatives of any other line, with regard to the rates
398 that should be charged on property which was transported from New York to the River Plate during the time that Exhibit No. 2 of the petition was in effect?

MR. BURLINGHAM: I make the same objection.
The witness is directed not to answer and the Examiner is requested to certify this question to the Court.

Q. Now, was there any arrangement between your concern and representatives of any other line with respect to
398 the ports in the United States from which property was transported from the United States to the Plate during the period of time I have stated above?

MR. BURLINGHAM: I make the same objection.
The witness is directed not to answer and the Examiner is requested to certify this question to the Court.

Q. Mr. Daniels, I show you Exhibit No. 5 for identification, a statement of commission; have you seen this
400 before? A. (After examination.) If it was furnished by the secretary I presume we have, and I am willing to accept it.

Q. This sheet of paper has on it some at least of the vessels that have been engaged in the trade between New York and Brazilian ports, has it not? A. I should say yes.

Q. Do you recognize the names of those vessels, any of them, as belonging to the Lamport & Holt Line? A. Yes.

Q. And which ones? A. *Byron, Verdi, Tennyson, Velasquez, Voltaire, Cavour, Vasari.*

Q. And were those boats operating between New York and Brazil in 1908 and 1909, all of them? A. The record

appears from July 1st, 1908, to June 30th, 1909, and to the best of my knowledge I accept it as correct. 401

Q. And are all of those boats still in that service? A. No.

Q. Which ones have been taken out of that service? A. *Valasquez.*

Q. And is she sailing the seas at this time? A. I think not.

Q. What has become of her? A. She was wrecked and lost.

Q. And has she been replaced? A. Naturally, to run our service something takes her place, but nothing in definite words to answer you. 402

Q. No steamer has been put on in her place? A. Yes, I should say it has been taken by other boats.

Q. And that is her tonnage has been distributed among other boats? A. Well your question is a bit peculiar. We are constantly losing boats. We would never say they were individaully replaced, but we are constantly building ships.

Q. What ships has your concern put on since 1901? A. We put on a great many boats. 403

Q. In the New York Brazilian service? A. Yes.

Q. Can you give us the names of them? A. I can give you a few; I cannot give you a complete list off hand. The *Vestris,* more especially; the *Veronese,* and there have been several other boats that I will have to refer to that made individual or half dozen trips, that I should have to refer to the records to be positive about.

Q. How many would you say had been put on since June 30th, 1909? 404

MR. BURLINGHAM: You mean the whole of Lamport & Holt's fleet, or this service?

Q. Of this Brazilian service, the Lamport & Holt Line? A. The service has been materially increased; some boats that have been put on of course have done their work and been withdrawn, but the service as a whole has been materially increased. If that is what you want to get at. Of course, with boats coming and going it is almost impossible to answer that.

405 MR. BURLINGHAM: That is, they go from one port into the United States port and go back?

THE WITNESS: Yes, so it is a difficult question to answer in detail.

Q. Now, can you tell me to what extent the Lamport & Holt tonnage has been increased, if it has been increased at all, since June 30th, 1909? A. I think the tonnage has been increased many thousand tons.

Q. In this service between New York and Brazil? A.
406 Yes, in this service as well.

MR. BURLINGHAM: You mean ship tonnage?

MR. CRIM: Yes, ship tonnage.

Q. Can you tell me which of these boats transported property, the boats mentioned in Exhibit No. 5 for identification, were engaged in the Plate service in 1908 and 1909?

MR. BURLINGHAM: That is objected to.

407

A. The boats commencing with "V."

Q. All the boats commencing with "V"? A. All of the boats commencing with "V".

Q. Were engaged in the Plate service? A. Yes.

Q. And have those boats continued in the Plate service since June 30th, 1909? A. Well, with the exception of the Velasquez.

Q. And she goes to Brazil points only? A. She is lost.

Q. When was she lost? A. I should have to refer to the statistics.

408 Q. Is this one of the reports that Mr. Goodwin made to the members of the New York Committee? A. Yes.

Q. And what is meant here by "Commissions" in this statement? A. I think my best answer to that would be to refer you to Exhibit 2, paragraph four.

Q. Exhibit 2 of the petition and paragraph four; and this statement is made pursuant to that paragraph in the petition? A. No, this statement, like all of the statements made up by Mr. Goodwin, are only *pro forma* statements, and are not final statements; statements that are sent over to our principals in Europe.

Q. And re-adjusted in accordance with the revised facts

in Europe? A. *Pro forma* from New York, final adjust- 409
ment to be made in Europe.

Q. And what are these; after Byron I find under the initials B.&D., $486.74, is that the amount of commission credited to Busk & Daniels on earnings of the Byron? A. That is the amount of commission that we would charge Lamport & Holt on the Byron, assuming that the figures are correct.

Q. And that was five per cent. of what? A. Five per cent. of the amount of the manifest; the freight manifest.

Q. That is, of the earnings by the boat from New York 410
to Brazil ports? A. The freight earnings of the boat, yes.

Q. And it was not predicated upon the entire earnings, was it? A. I do not quite understand your question.

Q. Did you receive a commission—what is this commission of $486.74? Is that five per cent. of the entire earnings of the Byron on this trip? A. I think not.

Q. And what earnings are not included in that commission? A. I think I would say passenger earnings, for instance.

Q. And any commodities not included? Will you 411
mind if I refer to the petition?

Q. Certainly; you have a right to everything? A. (After examining petition.) I think I see what you want. I had almost forgotten it. I can say I think there were exceptions.

Q. That is, that there were earnings in the service between New York and Brazil that the commission was not predicated on at all? A. What do you mean by "predicated"?

Q. I will change my question. Was sugar included dur- 412
ing this period; was sugar one of the commodities covered by the Pooling Agreement of June, 1908?

MR. KIRLIN: Do you mean commissions on sugar trade? A. I don't quite understand you.

Q. Was sugar one of the commodities included in the Pooling Agreement of 1908? A. If sugar was shipped outwards from New York on any of the boats I think to the best of my knowledge it would come under the general commissions referred to here.

413 Q. Now then, what do you mean by general cargo in your marine language? A. It means the general run of manufacturers and miscellaneous goods that would not come under the head of staples or be shipped in large enough quantities to be specified by themselves.

Q. Were the commodities that came under general cargo in 1908 and 1909 included in the Pooling Agreement of 1908? A. Yes, sir.

Q. And after you received this statement from Mr. Goodwin what did you do with it? A. Why, I presume we
414 kept a copy in the office and sent a copy to England.

Q. Did you receive from Lamport & Holt these sums of commissions indicated in column three amounting to $13,722.19? A. Without being of my own knowledge able to state positively I should say to answer your question in general, yes.

Q. And the commission statement indicates that the Lamport & Holt Line had twenty-eight sailings during the period of time covered by Exhibit No. 5 for identification, is that in accordance with your recollection? A. If the
415 record is there I accept it as correct.

Q. You have no doubt but what these steamers actually sailed? A. If they are so recorded I think they must have actually sailed.

Q. And this statement indicates that there were some twenty-eight other sailings by steamers not your own; will you look through this list and tell me what lines those steamers belong to? A. The Prince Line.

Q. What ones belong to the Prince Line? A. Those that have "Prince" in their name.

Q. And all the others belong to the German lines, Ham-
416 burg-American and Hamburg-South American? A. I won't be positive whether those two companies owned those steamers at that time or not, but for all the purposes of your question I presume I can say yes. If they did not own them then they bought them shortly afterwards.

Q. Now, I show you Exhibit No. 6 for identification and I find after the Byron the figure 12, what is the significance of the number 12? A. I am not able to answer intelligently.

Q. Opposite the Byron I find the entry $6,553.94; do you know what that entry pertains to? A. Without positive knowledge of my own I presume that represents the accounting under Exhibit No. 2 in the petition.

Q. What does the sum in dollars and cents mean in that account? A. It means that if the Pool had ever been consummated or had ever been wound up that entry Exhibit 2 in the petition would probably be the difference between the accounting figures given in terms of charter and the earnings of the steamer. 417

Q. The difference between the terms of charter and the earnings of the steamer? A. Yes.

Q. On the following page I find the entry "July 31, by cash $100"; what does that entry refer to? A. I presume again, without positive knowledge, that that refers to the expenses of running Mr. Goodwin's office. 418

Q. And under date of November 6 I find, "Commission, $384.79"; and what is meant there by commission? A. I think that is a bookkeeping entry only to correspond with the entry in your Exhibit 5 for identification.

Q. In the same Exhibit 6 for identification I find the entry "Charter Account, different ports, Tennyson, No. 16"; what does that entry signify? A. I think that is some bookkeeping adjustment; I could not answer in detail.

Q. You don't know? A. No. 419

MR. CRIM: Mr. Burlingham, attached to Exhibit No. 6 for identification are four other papers and for convenience I suggest that we mark those Exhibits 6-a, 6-b, 6-c and 6-d for identification?

MR. BURLINGHAM: Yes.

(Papers so marked.)

Q. Now, I call to your attention Exhibit 6-a for identification, and can you tell me what the entry under date of October 5th "To Grecian Prince, No. 3, $2,053.99" mean; what does it refer to? A. I cannot answer for the Prince Line. I haven't any information. 420

Q. And I show you Exhibit 6-b for identification and ask you if you know what the entry under October 2nd, 1908, "To Corrientes, No. 1, $1,749.18" means? A. I am not able to answer the particulars regarding the German Lines, not having information.

Q. Now, I show you Exhibit No. 6-c for identification, and opposite the word Verdi, I find No. 5; can you tell me the significance of the number there? A. I am not able to.

Q. You don't know what it means? A. No.

421 Q. Now, under the entry "profit $3,234.30;" what does that entry mean or refer to? A. That refers to the particulars on— it should agree with that, but I find I do not understand it.

Q. Is that supposed to be the profit made on a particular trip of the Verdi between New York and Brazil with respect to the property transported from New York and Brazil? A. No; your question is too general.

Q. Well, what does it mean? A. It is a bookkeeping entry, *pro forma* apparently by the secretary in con-
422 firmation of this paragraph three of Exhibit 2 of the petition, but as this whole pool, so-called pool in you petition, never was consummated owing to various reasons it really never has existed.

Q. What do you mean by saying it was never consummated? A. I mean that it has never terminated.

Q. It is still going on? A. No, quite the reverse. So far as the arrangement went it terminated, but these accountings that you have reference to, any conclusion——

Q. Do you mean to say there has been no final ad-
423 justment of the account? A. As I understand it no, there has been no final adjustment of the accounts.

Q. Everything was done that led up to that adjustment, wasn't it? A. From this side to the various principals; *pro forma* accountings for the use of the principals on the other side were forwarded them, but owing to the terms of the original undertaking not being lived up to, we will say by the parties to it, you will notice in your Exhibit No. 3 the Lamport & Holt Line gave notice of withdrawal from all interest on date the 30th of June, 1909, and the adjust-
424 ment of the year previous which your documents call for never has been made owing to the fact that the operation of the agreement, as you have on your exhibits was never operated in the form you have it.

Q. It was operated part of the period which the Pool Agreement Exhibit No. 2 covers? A. It was carried out in New York as per the instructions abroad and in the terms of your Exhibit during the period.

Q. You did all you could to carry it out, didn't you? A. We followed the instructions of our head office.

Q. And you did not find any opposition on their part to living up to Exhibit No. 2 in the petition, did you? A. Whose part may I ask?

Q. Lamport & Holt? A. I am not able to answer for 425
their position any time; they have never advised me.

Q. You had received no communications from them with regard to their satisfaction or dissatisfaction as to the operation under this agreement? A. We gathered that there was dissatisfaction and various other reasons why it was terminated by us or by the Lamport & Holt Line.

Q. Now then, coming back to this Exhibit 6-c, had the terms of Exhibit 2 in the petition been carried out what would the entry of $3,234.30 have signified to you on Exhibit 6-c? A. Apparently a bookkeeping record as per 426
clause three in Exhibit No. 2 in the petition.

Q. And cannot you give us any more definite information with regard to that entry? A. I am not able to. That is all bookkeeping and I am not able to.

Q. Now, I call your attention to No. 6-d and I find the entry, folio 2, "To Lamport & Holt, $39,442.81" under debit; what connection has that entry with Exhibit No. 2 in the petition, if any? A. Bookkeeping entry paragraph three of that Exhibit; *pro forma* bookkeeping.

Q. And with regard to the commodities transported by 427
the Lamport & Holt Line, what relation is there between the earnings on those commodities and this entry of $39,442.81? A. I do not quite get your meaning.

Q. This entry under the heading debit; did it owe anybody that sum? A. That is entirely bookkeeping; I am not able to give you the figures further than the account, the *pro forma* accounts that have been supplied.

Q. You don't know what it means, what it signifies, or what it pertains to? A. Yes, it pertains to the bookkeeping entry under the paragraph in Exhibit 2 of the petition, 428
pro forma bookkeeping.

Q. And what does the entry folio 22, Prince Line, under credit "$23,865.85" refer to; the *pro forma* bookkeeping entry of Exhibit 2 in the petition? A. I should say it did.

Q. Now, I show you Exhibit No. 7 for identification, under date of July 1st, 1908, by balance $31.10; can you tell me what that entry refers to? A. Without positive knowledge of this bookkeeping, which is a matter of detail, but for practically your object in questioning and in answering you I think that that is the balance and represents the expenses that Mr. Goodwin incurred in running his office.

429 MR. CRIM: Mr. Burlingham, there are some papers annexed to Exhibit No. 7 for identification and I suggest that we mark them Exhibits 7-a and 7-b for identification.

MR. BURLINGHAM: Very well.

(So marked.)

Q. I show you Exhibit No. 7-a for identification and can you tell me what the entry under date of July 31, 1908, "To Lamport & Holt, $100," signifies? A. I think again that is
430 account of operating expenses of Mr. Goodwin's office.

Q. Did you contribute to the maintenance of his office? A. We paid one-third of the maintenance of his office.

Q. Who paid you, your partnership or the Lamport & Holt Line? A. The Lamport & Holt Line paid everything. We are only their agents.

Q. Was it paid through your office? A. Paid through our office.

Q. And has it at all times during the time that Mr. Goodwin has occupied it? A. We have paid it for account of Lamport & Holt.

431 Q. Now, I show you an entry on Exhibit 7-b for identification, December 31, 1910, "To Lamport & Holt Line one-third"; what does "one-third" signify to you? A. Again it is apparently an account for running Mr. Goodwin's office for six months amounting to $3600, of which the Lamport & Holt Line paid one-third, or $1216.

MR. CRIM: I offer Exhibits for identification Nos. 5, 6, 6-a, 6-b, 6-c, 6-d, No. 7, 7-a, 7-b in evidence.

THE WITNESS: As they are furnished by Mr. Goodwin, apparently they are all correct and I ac-
432 cept them.

Q. Mr. Daniels, I show you Exhibit No. 1 in the petition and ask you if there were any contracts with respect to the transportation of property between the United States and Brazilian ports which antedated that contract or agreement?

MR. BURLINGHAM: You mean in the contract with whom?

MR. CRIM: With the same parties.

Q. With regard to the transportation of property be- 433
tween New York and Brazil?

MR. BURLINGHAM: Are you referring to a particular section of this?

MR. CRIM: No.

MR. KIRLIN: Objcted to as immaterial and irrelevant.

A. I don't think with the same parties, but, I would not be positive.

Q. Now, was your copartnership, or the Lamport & Holt 434
Line, a party to any agreement with lines other than the defendants in this case with respect to the transportation of property between New York and Brazil previous to this contract?

MR. BURLINGHAM: I object on the ground that it is immaterial and irrelevant and not within the issues.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court. 435

Q. Do you recall the contract between the Lamport & Holt Line and the Prince Line with respect to Brazilian traffic about 1901?

MR. BURLINGHAM: That is objected to on the same grounds.

The witness is directed not to answer and the Examiner is requested to certify this question to the Court.

436

Q. Have you in your possession now, or in your custody now, an agreement between Lamport & Holt and James Knott on behalf of the Prince Line, dated about February 28th, 1901, with respect to the transportation of freight and property between New York and Brazilian ports?

MR. KIRLIN: I made the same objection, and direction.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

437 Q. I show you what purports to be a contract under date of February 28th, 1901 and ask you if you have seen that contract before? That paper before?

MR. BURLINGHAM: I make the same objection. The witness is directed not to answer and the Examiner is requested to certify this question to the Court.

Q. I ask you to examine that paper and tell me whether you are familiar with its contents?

438 MR. BURLINGHAM: I make the same objection. The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Q. Was the Lamport & Holt Line engaged in transporting property from New York to Brazil in 1901.

MR. BURLINGHAM: Objected to as immaterial and irrelevant.

439 A. Yes.

Q. Was the Prince Line engaged in transporting property from New York to Brazil in 1901? A. I am not able to answer positively; I think so, though.

Q. Do you know of any agreement or arrangement with respect to the transportation of property from New York to Brazil in existence in 1901 between the Prince Line and the Lamport & Holt Line?

MR. BURLINGHAM: I make the same objection.

440 The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

MR. KIRLIN: I join in the objection and request.

Q. Have you ever heard of Robert M. Sloman & Company with respect to the steamship business, particularly the business between New York and Brazil?

MR. BURLINGHAM: Within what period?

A. Yes.

Q. Did they operate a steamship line from New York to

Brazil at any time? A. I think they were principals at 441
one time.

Q. And when? A. I am unable to recall without looking up data.

Q. I show you a paper purporting to be a memoranda of agreement between Messrs. Lamport & Holt, Messrs. Robert M. Sloman & Company and James Knott on behalf of the Prince Line, and ask you to examine that paper and state whether it refreshes your recollection as to when Robert M. Sloman & Company operated a steamship line between New York and Brazil? 442

MR. KIRLIN: I object to counsel making a statement on the record as to the purported contents of a paper; I also object to the general question as immaterial and irrelevant and incompetent and outside these issues, and request that the question be not answered, but be certified, and move to strike out that part of the testimony in which counsel characterizes the paper.

MR. CRIM: I ask to have the paper marked Exhibit No. 109 for identification. 443

MR. KIRLIN: We object to marking the paper, or any reference to it, on the grounds previously stated.

Paper marked Petitioner's Exhibit No. 109 for identification.

Q. Was there at any time subsequent to February 28th, 1901 a committee which met in New York, the committee being composed of members of the Prince line, Lamport & Holt Line and Sloman & Company with respect to Brazilian business? 444

MR. KIRLIN: Are you now enquiring, Mr. Crim, of the period anterior to the date of the agreement, Exhibit 1 in the petition?

MR. CRIM: Yes

MR. KIRLIN: Then we object to it.

MR. CRIM: Any time between 1901, February 28th, and February 14th, 1908.

MR. BURLINGHAM: We object on the grounds previously stated and make the same request for certification.

454 The witness is directed not to answer and the Examiner is requested to certify this question to the Court.

Q. Did you attend the meetings of any committee composed of representatives of Sloman, Lamport & Holt and Prince Lines previous to February 1908?

MR. BURLINGHAM: The same objection and request for direction.

446 The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Q. I show you Exhibit No. 2 in the petition, paragraph 3, at the top of page 26, and call your attention to the word "Pernambuco"; is that a Brizalian port? A. Yes.

Q. And have the vessels of the Lamport & Holt Lines carried property from New York to that port at any time during the past five years? A. I am not able to answer that question intelligently without referring to data.

447 Q. What data would you want to refer to? A. The boats that have sailed within the last five years. I can answer you, however, that we do not call at that port regularly.

Q. It is one of the Brazilian ports to which your line sometimes sends vessels? A. Yes.

Q. And I show you the figures 240, what does that mean, Mr. Daniels, if you know? A. I think it means two dollars and forty cents.

Q. "f. f. a."? A. f. f. a., free from along side.

448 Q. That is what you call the landed dollar? A. No, the landed dollar—you have not read quite correctly; there should be a comma after "landed," and then the word "dollar" should be a dollar mark. Your printer made a mistake in making it up.

Q. With respect to a shipment to Pernambuco, $2.40 is the charge under what circumstances? A. Let me get at the correctness a bit. That $2.40 landed at Pernambuco refers to the expenses apparently incident when a steamer lands a cargo at the port. f. f. a. is when the cargo is taken from alongside the vessel.

Q. And that was a charge agreed upon by the defendant in this case pursuant to Exhibit 2 in the petition? 449

MR. BURLINGHAM: The petition speaks for itself.

A. The record shows, but I don't think you are quite right in the matter of what it amounts to in bookkeeping, which this paragraph refers to. It covers the incidental expenses. I would be very glad to enlighten you on all these things.

Q. I shall be very glad to have you do it. That bookkeeping entry was made at $2.40 regardless of the actual 450 cost and expense of the service? A. Yes, at that time.

Q. And how long has your line been using the entry $2.40 with respect to that particular New York service? A. Well, I should answer that for your purpose practically only during this period referred to.

Q. Do you know what it was previous to that time? A. It is an arbitrary figure; I don't know whether one existed previously.

Q. Now, I show you a paper marked "Memoranda of Agreement made between Messrs. Lamport & Holt of 451 Liverpool and London, Messrs. Robert M. Sloman & Company of Hamburg, and Mr. James Knott of New Castle on Tyne on behalf of the Prince Line or Company, and ask you to look at this paper and tell me whether if this paper refreshes your recollection there was previous to 1908 a specific bookkeeping charge with respect to that port.

MR. KIRLIN: I object to that on the grounds previously stated and also move to strike out the characterization of this paper.

MR. BURLINGHAM: I ask that the question be certi- 452 fied.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Q. Now, I ask you if you know who succeeded the so-called Sloman Line——

MR. BURLINGHAM: That is objected to.

Q. (Continuing.) In this trade between New York and Brazil?

453 MR. BURLINGHAM: Objected to on the ground that there is no evidence as to what the Sloman Line service was when it terminated, whether it was succeeded or not and is immaterial and irrelevant, and we ask that it be certified.

The witness is instructed not to answer the question and the Examiner is requested to certify this question to the Court.

Q. When did the Sloman Line discontinue the business
454 of transporting property from New York to Brazil?

MR. KIRLIN: Objected to as immaterial.

A. Without opportunity to look up data I am unable to answer intelligently.

Q. What is your best recollection?

MR. BURLINGHAM: The same objection.

A. A number of years ago—I don't want to have to answer and then make a correction to my testimony. I
455 haven't any direct information.

Q. Do you know whether that line was purchased by any other line or not?

MR. BURLINGHAM: The same objection.

A. I only know by rumor.

Q. What rumors?

MR. KIRLIN: I object to the rumors as hearsay and incompetent.

456

A. Why, it was reported that the line had been sold, public reports; I have no further information than that.

Q. Do you know the names of any of the vessels that the Sloman Line operated?

MR. BURLINGHAM: The same objection.

A. Again I cannot answer you intelligently without looking in the data at the time.

Q. You don't remember the name of a single vessel that the Sloman Line operated between New York and Brazil?

A. I don't want to give my memory such a bad reputation,

but I prefer not to answer until I can look it up. I shall 457
be perfectly willing to give that later to you.

Q. I want your recollection now, if you have it? A. I must say no then.

Q. Now, do you remember the name of any vessel sailing at any time under what was known as the Union Company between New York and Brazil?

MR. BURLINGHAM: Objected to as immaterial and irrelevant.

A. To my recollection there was a Union Company, so- 458
called Union Company, operating in the Brazil trade at one time.

Q. How long ago? A. I again cannot remember without getting advices or particulars.

Q. Are they operating any vessels now?

MR. BURLINGHAM: I make the same objection.

A. No, not in the Brazil trade to my knowledge.

Q. Do you know anyone in New York who represented the Sloman Line when it was in existence? A. I think 459
Funch, Edye & Company represented them.

Q. And do you know who represented the Union Line in New York? A. I also think Funch, Edye & Company represented them.

Q. And did Funch, Edye & Company represent the Sloman and Union lines at the same time?

MR. KIRLIN: Objected to as immaterial and irrelevant

MR. BURLINGHAM: This is all subject to objection as immaterial and irrelevant. 460

A. I think one bought out the other. I am not able to give you the full proof without getting better informed.

Q. Where would you go to get better informed on a question of that sort? A. I think I should ask Funch, Edye & Company.

MR. CRIM: Mr. Burlingham, at our last session the Government offered a letter dated September 7th, 1906 from Lamport & Holt to Busk & Jevons; it now appears that an error was made and the stenographer marked the wrong letter, and since the

461 letter is very long and contains a great deal of matter that the Government is not desirous of putting in the case, I would like to suggest that we make an extract and mark the extract and use it as if it were the original letter.

MR. BURLINGHAM: That is perfectly agreeable to me.

Extract of letter marked Plaintiff's Exhibit No. 30-a for identification.

462 Q. I show you Exhibit No. 30-a for identification and ask you if you paid the sums of money to Messrs. McLaughlin, Hard & Rand, Crossman & Sielcken.

MR. BURLINGHAM: Objected to as immaterial and irrelevant and not within the issues, it appearing that the letter is dated September 7th, 1906.

MR. KIRLIN: I join in that objection.

MR. BURLINGHAM: And I ask that that question be certified.

The witness is instructed not to answer the ques-
463 tion and the Examiner is requested to certify this question to the Court.

Q. I call your attention to the word "rebates" in this letter No. 30-a for identification; I call your attention to the part of the sentence "balance of rebates due them in respect to coffee shipment"; were those concerns, McLaughlin, Hard & Rand, Crossman & Sielcken, importers of coffee from Brazil.

MR. KIRLIN: We object to counsel putting on the
464 record extracts from papers which are not in evidence and in that way getting something on the record to which we are objecting, and on which we are asking the ruling of the Court, and basing other enquiries on the matter so put upon the record.

Q. Do you know the business of those concerns mentioned in that letter, that is, Hard & Rand, Crossman & Sielcken, and McLaughlin? A. The three firms are coffee importers, and other business.

Q. And have they during the past five years imported any coffee to the United States from Brazil over the Lam-

port & Holt Line? A. Without referring to records I can 465
say yes, all of them.

Q. And very large quantities of coffee, have they not? A. Yes; I think McLaughlin is out of business; I am not sure.

Q. Previous to 1907 did they import into the United States coffee over the Lamport & Holt Line from Brazil?

MR. KIRLIN: Objected to as immaterial, and irrelevant?

A. Yes, sir. 466

Q. Did you have anything to do with these importations? A. I don't quite get the meaning of your question.

Q. Did you collect the freight on account of these shipments? A. I presume we collected the freight, yes, sir.

Q. Ordinarily that would be the course, wouldn't it? A. Yes.

Q. And what would you do with the money that you collected? A, We would hold it to the credit of the Lamport & Holt Line.

Q. How long would you hold it? A. Not very long; 467
probably until the accounts were made up.

Q. How often do you make up your accounts? A. The individual accounts of the steamers are made up about four weeks after they arrive.

Q. Now then, have you paid any money to Crossman & Sielcken during the past five years on account of coffee shipments from Brazil over the Lamport & Holt Line by Crossman & Sielcken?

MR. BURLINGHAM: We object to that question; it calls for information with regard to payments prior 468
to the dates specified in the petition and in the exhibits attached to the petition, namely, the first of July, 1908.

MR. CRIM: I want to call to the attention of the counsel for the defendants that this petition does allege a conspiracy previous to 1908, the charge in the petition.

MR. BURLINGHAM: It is limited here to five years; I withdraw my objection.

Q. (Question read.) A. In what reference, Mr. Crim, do

469 Q. Coffee which they had imported to this country from Brazil and which was carried by the Lamport & Holt Line? A. We have made no payments of that character unless we were instructed to pay a specific sum to any of these people that you have mentioned, in which case our books would show it, and the transaction would have been simply that of banking. We would ourselves not have paid them, which would answer your question in the negative.

Q. You would not pay them without authority or direction from Lamport & Holt, is that what I understand you
470 to say. A. No; what I want to convey to you is that if we ever paid them certain sums that would apply to your question, we have paid them such sums only as banking for Messrs. Lamport & Holt, and what they were paid for and why they were paid would not have possibly been to our knowledge or interested us here in New York.

Q. What is your recollection as to whether you have paid any sums on account of importations by this concern?

MR. KIRLIN: Within that period?

MR. CRIM: Within the past five years.

471

A. I find that we have paid them certain sums on instructions from Messrs. Lamport & Holt.

Q. And what was the reason for these payments; what was the claim made by Crossman & Sielcken? A. That I could not answer. It was never made to us. Sometimes our instructions may convey the information for what the payment was made; sometimes they may simply direct the payment without any information. You have a record of them all.

472 Q. Do you know what is meant in the steamship trade between Brazil and New York by the expression "rebate on coffee shipments?" A. I know of my own knowledge, yes. The word rebate is nothing more or less than what in other trades is known as a discount, although it has got rather a bad reputation at large.

Q. Have you paid any rebates on account of coffee shipments during the past five years? A. What payments we might make as bankers; I don't know what application it has had otherwise.

Q. Have you as bankers made any payments? A. We have made payments; what they are for I don't know.

Q. You don't know whether they were rebates or not? 473
A. Except that it might be mentioned and I should have to take their statements for that; I was not interested in it at all.

Q. What is your recollection as to whether you have made any payments as rebates on coffee shipments from Brazil during the past five years? A. My recollection is that in some of these instructions to pay a fixed amount it mentioned that the amount was paid to cover some claim made by these firms abroad for the rebate or discount that might be due them, and also in some foreign country. 474

Q. From whom do you receive such instructions? A. We would receive instructions to make such payments from Messrs. Lamport & Holt in Liverpool.

Q. And a reference to the authority to make the payments, if any were made? A. We would have nothing except our general books and they would show the payment of the amount I think.

Q. And the date of the payment? A. The date of the payment.

Q. And a reference to the authority to make the payment? A. I think likely, without knowing positively. 475

Q. Now, I ask you if this paper Exhibit No. 30-a for identification refreshes your recollection as to the payment of any sum or sums on account of rebates on coffee shipments from Brazil to New York by the Lamport & Holt Line to Hard & Rand within the past five years.

MR. BURLINGHAM: Objected to on the ground that the paper is dated in 1906.

MR. CRIM: That may refresh his recollection.

MR. KIRLIN: The question is whether that letter refreshes your recollection as to payments within five years. 476

MR. BURLINGHAM: Look at it as much as you please and see whether it refreshes your recollection?

A. The letter does not refresh my memory, because I do not recall that in mind from the general statement. We admit it is a matter of record on our books, and I understand it was also a matter of record in evidence here, both from our letters and otherwise that we have been instructed at various times out of the money that we had in bank

477 for account of the Lamport & Holt Line to make certain payments for their account in Liverpool; sometimes the particulars being given what they are for and other times no particulars given.

Q. Now, I ask you to look at the letter and state if it refreshes your recollection with respect to the payment of rebates by your concern to the firm of Hard & Rand on account of coffee shipments from Brazil to New York previous to 1907.

MR. BURLINGHAM: Objected to on the ground that
478 it is immaterial, irrelevant and not within the issues, and purports to refer to payments at a date prior to any date mentioned in the petition, namely, in the year 1906, more than five years prior to the filing of the petition, and we ask that the witness be instructed not to answer and that the question be certified.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

479

Q. I show you letter under date of January 25th, 1906, produced by you pursuant to a subpoena *duces tecum* in this case, and ask you if that is your signature?

MR. BURLINGHAM: I object to any letters being referred to of a date prior to five years prior to the filing of this petition on the ground that any letters or transactions at that time are irrelevant and immaterial and not within the issues, and I request that he should not answer and that the matter be certi-
480 fied to the Court.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Q. Now, I show you another letter under date of February 2nd, 1906 which you produce pursuant to a subpoena *duces tecum,* and ask you if that is your signature?

MR. BURLINGHAM: The same objection.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Q. I show you another letter under date of February 2nd, 1906 from Busk & Jevons to Lamport & Holt and ask you if that is your signature? 481

MR. BURLINGHAM: I make the same objection.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Q. I show you another letter entitled "Brazil", dated February 9th, 1906, and ask you if this is your signature? 482

MR. BURLINGHAM: Makes same objection.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Q. Did you send these letters to Lamport & Holt?

MR. BURLINGHAM: I make the same objection.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court. 483

Q. Did you send these letters to Lamport & Holt?

MR. BURLINGHAM: I make the same objection.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Q. Did you dictate these letters to a stenographer?

MR. BURLINGHAM: Same objection.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court. 484

Q. Have you any correspondence in your possession in the nature of letters from Lamport & Holt to you, or your firm, with respect to the Brazil business during the years 1906 and 1907?

MR. BURLINGHAM: Same objection.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

485 Q. During the year 1906 and that part of 1907 previous to June 1st?

MR. BURLINGHAM: Same objection.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Q. Have you any letters in your possession, any agreements or copies of agreements, between Lamport & Holt, the Hamburg lines and the Prince Line, with respect to
486 rates on shipments of property from New York to Brazil during the year 1906.

MR. BURLINGHAM: Same objection.

The witness is instructed not to answer and the Examiner is requested to certify this question to the Court.

Hearing Adjourned to Thursday, January 2, 1913, at 10.30 o'clock A. M.

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NEW YORK, January 2, 1913.

Hearing resumed pursuant to adjournment at 2. 30 P. M.

APPEARANCES:

JOHN W. H. CRIM, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., for Prince Line, *et al.*

488 MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham, Esq., and Charles Burlingham, Esq., for Frederick T. Busk, *et al.*

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

LORENZO DANIELS, recalled on behalf of the Petitioner, testified as follows:

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Daniels, I show you a letter marked exhibit 40 and 41 for identification and ask you if you know who wrote that letter? A. Personally, I could not tell you ab-

solutely who wrote it, but for the sake of your case—trial 489
—I am willing to accept all these copies of letters signed by my firm as being correct.

Q. That I think is already in the record, Mr. Daniels? A. There is no way of my telling.

Q. I want to know about your personal information? A. No way of telling.

MR. BURLINGHAM: You would have to see the letter book to see whether it is his signature or not.

Q. Mr. Daniels, I wish you would read that letter over 490
and see whether you recall having dictated or signed such a letter?

THE WITNESS: It has the ear marks. For all purposes I am willing to accept the letter to the best of my knowledge. I cannot say definitely.

Q. You cannot say that you recall having dictated such a letter? A. I am willing to accept it that I did until there is some evidence to the contrary.

MR. MONTGOMERY: I offer that letter in evidence.

MR. BURLINGHAM: We object to any parts of the 491
letter which do not relate to the matters mentioned in the petition—referred to in the petition. There are many items in that having nothing to do with it.

MR. KIRLIN: I object to the letter generally on the ground that it relates to matters prior to the date when the agreement became effective.

Q. I call your attention to the letter (Mr. Montgomery reads) "We note that you wish us to maintain the advance rates to Bahia as against Rio and also to resume the 492
charge for primage. This latter we have passed on to the other lines, and believe they are cabling. We have not yet agreed." To what does that language, "the advance rates to Bahia as against Rio" relate, Mr. Daniels? A. Without being absolutely conversant with that particular instance, the expenses of the different ports very often vary. Take the instance now. They are building docks at Bahia and the docks are considerably congested there. Our steamers cannot get despatch. We are advancing the rate sufficiently to reimburse us. I presume there was some similar case at that time. It was a natural condition.

493 By Mr. Crim:

Q. When you say that you are advancing the rates at the present time, you mean that the three so-called syndicate lines are advancing the rates at the present time to cover that situation? A. We are advancing, also the Lamport & Holt Line.

Q. How about the Prince? A. I don't know whether they are advancing to the same level.

Q. How about the German Line? A. I don't know whether they are advancing to the same level or not.

494

By Mr. Montgomery.

Q. This language, Mr. Daniels, "and also to resume the charge for primage"; what does that mean?

MR. BURLINGHAM: Do you mean what is "primage"?

THE WITNESS: I don't seem to recall, except that we charged primage.

495 Q. You do now? A. On our general shipments.

Q. On all of them? A. Yes.

Q. That is on your fast boats? A. Yes.

Q. Do you have slow boats that you don't charge primage on? A. Yes. In other words, the fast boats command ten per cent. higher rate.

Q. And the rate without the primage is the rate that is charged by your slow boats and also by the boats of the Prince Line and the German Lines? A. I cannot speak for the others. We class our slow boats in the same class as their boats.

496 Q. Mr. Daniels, you don't mean that you don't know whether your rates now are the same as the Prince Line's and the German Lines?

MR. BURLINGHAM: Now, you mean.

MR. MONTGOMERY: Yes.

THE WITNESS: You ask me as to Bahia, whether our rates are the same. Frankly, I don't know. I think we are charging twenty shillings a ton. I don't think the other lines are. So I am told by the shippers.

By Mr. Crim: 497

Q. How long have you been charging primage on those fast steamers? A. For a number of years.

Q. Did you charge primage during the period of time that Exhibit 1 was in effect?

MR. BURLINGHAM: That is the traffic agreement annexed to the petition.

A. I could not answer you that without referring to the books.

Q. How about the period of time when Exhibit 2 was in 498
effect? A. We charged primage some of the time and some contracts are made without primage.

Q. Special contracts irrespective of any period of time? A. No, you take large staple contracts, they are charged at a net figure.

By Mr. Montgomery:

Q. You say here, Mr. Daniels, "This letter we have passed on to the other lines, and believe they are cabling. We have not yet agreed." What does that mean in connec- 499
tion with that primage? A. In connection with the primage I think it means nothing. I think, though, it means we have passed on—I should say the paragraph simply meant that we had passed on the information to the other lines.

Q. What does the language, "We have not yet agreed," mean? What does the word "we" mean there? A. Hard question to answer. I should imagine that the other lines had not followed suit.

Q. You would hardly use the term "agree" in the sense of following suit or following your lead, Mr. Daniels? A. That is very much the way we had then the business; when 500
we had business of that character we made it public property and passed the matter along. In that case they all seemed to have cabled their home offices.

Q. Mr. Daniels, Exhibit 1 of the petition is an agreement relating to traffic that was entered into February 14, 1908, was it not? A. That appears to be the date.

Q. You received a copy of that agreement for your information shortly after the time it was made, didn't you? A. Our record will show, but I doubt if we had it under acknowledgment at the time it was written.

Q. I call your attention to paragraph two of the agree-

501 ment, Exhibit 1, which reads as follows: "Pending a basis for a pooling agreement being arrived at, a tariff of rates from New York to be drawn up and strictly adhered to without any modification whatever except as they may be altered by agreement in meeting or in writing." That must have been in effect at the date of this letter, 29th of February, 1908? A. I don't think it could have been accomplished in so short a time, no.

MR. BURLINGHAM: I call your attention, Mr. Montgomery, to the fact that the agreement was not, ac-
502 cording to its terms, to go into effect until July.

MR. MONTGOMERY: "This agreement" (I am reading paragraph ten of Exhibit No. 1), "shall commence as from the date hereof and shall remain in force until the 31st of December, 1913."

MR. KIRLIN: There was a further provision there about allowing six months to make it effective, to get it confirmed.

MR. CRIM: It is admitted by both the Government and counsel for the defendants in this case, for the
503 purposes of this trial only that the date "30th June, 1908," at the bottom of page 24 of the petition is an error, and should be "30th June, 1909."

MR. MONTGOMERY: That, however, I take it only relates to the Prince Line.

Q. I call your attention, Mr. Daniels, to this book marked "Rate Agreements, March, 1907, to January, 1909, and ask you if you ever saw that book before? A. I cannot answer that positively. It has not made any impression on me. This is one of the books that Mr. Goodwin had, is it not?
504 Q. I am asking you? A. I don't recollect the details; it would not necessarily come under my—

By Mr. Crim:

Q. Did not you take that book to the United States Attorneys' office? A. On the other hand, I was just going to say that I was present when the United States Attorney came through the office and took out what he wanted. I may have seen it at the time.

By Mr. Montgomery:

Q. You think this book came from—to the best of your

knowledge you saw the United States Attorney take that 505
book from Mr. Goodwin's office? A. I cannot say positively—this was five years ago, gentlemen.

By Mr. Crim:

I move to strike out "all the documents the United States wanted." We want a lot of them that we have not at the time. We wanted a lot of them that we did not get.

Mr. Montgomery: I ask that this book be marked 506
for identification, Petitioner's Exhibit No. 110. I call your attention to a memorandum of writing; it appears to be dated, New York, February 19, 1908, in this Exhibit 110 for identification, and ask you to read that writing.

Mr. Burlingham: Why should he read it without our having a chance to see what it is.

(Mr. Montgomery hands book to Mr. Burlingham who examines it with Mr. Kirlin and hands same to the witness who reads as follows:)

The Witness: (Reading.) "It is hereby agreed to 507
make Rio Grande do Sul rates, as follows:

Rosin $1.00 net per 280 lbs.
Barbed wire 6.00 " " 2240 "
General cargo, Rio de Janerio landed rates plus 25%
New York, Feb. 19, 1908.
Kerosene, 27½% p. case.
F. f. a.
F. E. & Co.
B. & J. 508
P. F. G. & Co."

Q. Whose writing is that, Mr. Daniels, the body of the writing? A. I don't know.

Q. Whose initials are those at the bottom? A. Again I can only speak for Busk & Jevons.

Q. Whose writing is that? A. That is my signature.

Q. And B. & J. means "Busk & Jevons?" A. Yes.

Q. Was that signed by yourself as the agent of the Lamport & Holt Line? A. Yes.

509 Q. On behalf of Busk & Jevons? A. On behalf of the Lamport & Holt Line.

Q. The other signatures are Funch, Edye & Company and Paul F. Gerhard & Company? A. I think so.

Q. And they are signing as agents of the German Lines and the Prince Line respectively? A. Yes.

Q. Then you were at that time agreeing as to rates to be charged to Rio Grande from New York? A. That was the rate to Rio Grande do Sul; I presume they were what we call in our trade minimum rate. Our own rates were
510 probably a good deal higher.

Q. That was the minimum rate you were agreeing upon? A. Yes.

Q. I call your attention to the minute above that one, and ask you if you ever saw that h e? A. I don't remember ever having seen it.

Q. Is your signature on th don't see it.

Q. The memorandum t just read, signed by Funch, Edye & Compa & Jevons and Paul F. Gerhard & Company, i the first one in 1908 that was
511 signed by the three agen . A. I could not answer you that question.

Q. Do you know whether in January, 1908, for example, you were entering into similar engagements with the other lines? A. I could not answer that without some memoranda to refresh my memory.

Q. Isn't it a fact, Mr. Daniels, that this memorandum is the first one—I ask you to look through this book and see if you can find another memorandum of that kind made in 1908, preceding the one you have just read.

512 MR. SPOONER: Do it now.

MR. MONTGOMERY: Yes—just look through the book.

THE WITNESS: How long would it take to go through a book that size?

MR. BURLINGHAM: Do it, he wants you to do it.

MR. MONTGOMERY: It won't take long.

THE WITNESS: The one that you have referred to is apparently the first one that you have in the book. (After examining book.)

Q. There are, are there not, a number of memoranda of

a similar character signed by yourself in 1907 in the book? 513
A. There appears to be a file of somewhat similar ones signed in 1907, yes.

Q. You recognize your signature to a number of such agreements, do you not?

MR. KIRLIN: Are you purposing to make those more specific? We object generally to the inquiries of 1907, early part of 1907, as anterior to any matter complained of in the petition and as immaterial and irrelevant.

THE WITNESS: A great many seem to be author- 514
izing an agreement—still I cannot tell.

By Mr. Montgomery.

Q. I call your attention to a memorandum after that of February 19, 1908, and ask you to read the one on the next page, also dated February 19, 1908? A. (Witness reading.) "It is hereby agreed to make the rates for Cabadello the same as those for Pernambuco."

Q. Read the signature? A. F. E. & Co., B. & J., Busk & Jevons, P. F. G. Paul F. Gerhard & Company. 515

Q. Whose signature is that on behalf of Busk & Jevons? A. Mine.

Q. Will you look along and see if there is not a number of agreements of that kind making rates? A. (Witness examines book.) There is a number of the same wording, later on, yes.

Q. Having refreshed your recollection by having read those memoranda and knowing that this agreement, Exhibit 1, was entered into on February 14, 1908, what do you now say as to whether these agreements that are in Exhibit No. 110 for identification were made as a result of 516
the adoption of Exhibit 1 in the petition? A. These were all apparently made in confirming or in following out the instructions, pursuant to paragraph two in Exhibit 1, annexed to the petition.

Q. Then you were in agreement with those lines upon the rates charged between the United States and Brazil at the time of this letter, Exhibit 40 and 41 for identification? A. We were in process of organization at that time, I should say.

Q. Just what do you mean by "process of organization,"

517 Mr. Daniels? A. I mean that our rates you will notice in these memoranda are based upon the European rates—tariff of European rates—that we were instructed as agents to make our rates from the States to conform to, so that our merchandise in America would be able to get the same freight rates as competing merchants abroad. That covered practically all of the trade with the exception of the few American articles like rosin and flour, kerosene, such as you notice in those memoranda to begin with, which by instructions from Europe, we would equal-
518 ize here to a similar basis of value of freight.

Q. That is you try to have the same rates from America to South America as from Europe to South America? A. Yes, we have been doing it at all times.

Q. You have been doing it all the time since this agreement was adopted? A. Yes, we have been doing it for years; giving the American merchant the same rates that the European merchant had for the same class of goods from Europe. I might add that this is done when all our operations are based on at least ten or fifteen per cent.
519 higher basis of cost than it cost from England and Germany.

By Mr. Crim:

Q. You are familiar with the costs in Germany? A. I am familiar with the wages and general public knowledge of conditions in Europe.

Q. Are you familiar with the rates from European points to South America on the same commodities that you ship to South America? A. We have the English tariffs, yes.

520 Q. And you have been familiar with that condition for how long? A. We have always been familiar with it, whatever the competing point is.

Q. Will you produce those tariffs here from Europe to South America and South America to Europe? A. If I can get any copies of the going ones.

Q. You have just said that you are advised? A. We are, but we do not keep any dead ones in the office. As fast as it becomes useless we destroy it.

Q. Then you can tell what the rate was between Europe and South America by looking at the rates in effect here from New York to South America? A. No, we have in-

structions from our principals to make rates from America 521
equal to the rates from Europe to give the American merchants the same advantage.

Q. And you have always done that? A. We have always followed that general policy.

Q. How does that information come to you? A. Somebody generally sent a copy of the European rates.

Q. Does it come from the Secretary of the New York Committee? A. It does not.

Q. How does it come to you? A. Generally a copy is sent us. 522

Q. From whom? A. Our copy generally comes from our own people.

Q. And that has been the practice for a number of years? A. General policy of the line for a number of years.

By Mr. Montgomery:

Q. Do you still say then, Mr. Daniels, that this language that I quote (Mr. Montgomery reads): "This latter we have passed on to the other lines and believe they are cabling. We have not yet agreed." Do you still mean that 523
that language does not mean an agreement in regard to the charging of "primage" agreement between your lines and the other lines? A. I should gather that that applied to some special rates for Bahia and the reason why they were made a matter of information.

Q. You don't think that that related to a charge for primage? A. No, I am sure of the contrary.

Q. Did you not have some discussion with the lines about whether you should be permitted to charge primage about that time? A. Not to my knowledge. Our charge of primage is a premium that we get ourselves for faster and bet- 524
ter service.

HENRY F. MCCREARY, being sworn, testified as follows:

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. McCreary, you are a member of the firm of Hard & Rand, are you not? A. Yes.

Q. Engaged in the importation of coffee from Brazil? A. Yes.

525 Q. With a branch house in Brazil known as Hard, Rand & Company? A. Yes.

Q. You have been a member of that firm for how many years? A. I should think about fifteen or more.

Q. At any rate since before 1907? A. Yes.

Q. Mr. McCreary, I show you this letter book and ask you if this letter book marked "Letters, Lamport & Holt, 2 H. & R."; I ask you what that book is? A. I should presume it must be a copy book for letters, Lamport & Holt.

Q. From Hard & Rand? A. Yes.

526 Q. I ask to have that marked for identification? A. Let me see it; I have no doubt that is correct.

Marked Petitioner's Exhibit No. 111, for identification.

By Mr. Montgomery:

Q. I call your attention to page 155 of Exhibit 111 for identification and ask you if that is a copy of a letter written by you—dictated by you?

MR. KIRLIN: What is the date of it?

527 MR. MONTGOMERY: June 30, 1908.

Q. If you will look at the signature? A. That is my signature, but I cannot tell you whether I dictated it or not from that. If that is what you want to know, that is my signature. I don't suppose I could tell from reading the context whether I dictated it or not.

Q. Do you know whether you signed it? A. Yes.

Q. Do you know whether it was mailed? A. I have no reason to doubt it. Naturally I would not have anything to do with the mailing of it.

528

By Mr. Crim:

Q. That was a book in which you kept copies of letters which you sent to other persons? A. Presumably so. I don't know where those things are kept.

MR. CRIM: Mr. Burlingham, will you produce the original letter?

MR. BURLINGHAM: I don't know what it is yet.

MR. MONTGOMERY: Letter of June 30, 1908.

MR. BURLINGHAM: Is it included in the subpoena?

MR. CRIM: In the notice to produce.

MR. MONTGOMERY: I offer in evidence letter of 529
June 30, 1908, to Lamport & Holt, Liverpool, from Hard & Rand, New York.

Marked Petitioner's Exhibit No. 112.

Objected to on the ground that it is irrelevant and immaterial by all defendants.

By Mr. Montgomery:

Q. I call your attention to page 157 of this book and ask you if beginning with "Received from Lamport & Holt, London," and apparently signed "Lamport & Holt," that 530
is a cablegram received by Hard & Rand? A. Presumably it is, I would not have any reason to doubt it.

Q. You don't recall having seen it? A. No, I have not read it.

Q What do you say as to whether or not you have seen that? A. I think there is no doubt of it.

Q. You think that is a copy of cable received from Lamport & Holt by Hard & Rand, and it was called to your attention at the time? A. There is no doubt of it.

Q. You keep a copy of cables in this book the same as out-going letters? A. I presume so. 531

Q. I offer that in evidence.

MR. BURLINGHAM: Same objection for all the defendants.

Marked Petitioner's Exhibit No. 113.

Q. I call your attention, Mr. McCreary, to what purports to be a copy of a cablegram on the same page, and ask you what that is? A. That is just what it purports to be.

Q. A cablegram sent by Hard & Rand to Lamport & Holt, 532
London? A. Yes.

Q. Do you know whether you sent that cable or not; do you think you personally sent it? A. No, I am quite positive I did not send it myself, but I think it was sent from my house.

MR. MONTGOMERY: I offer that in evidence.

Marked Petitioner's Exhibit No. 114.

Q. I call your attention to what appears to be a copy of a cablegram on the next page, 158. A. It looks as if it was a cable from Lamport & Holt to us in reply to that

533 MR. MONTGOMERY: I offer that in evidence.
Marked Petitioner's Exhibit No. 115.
MR. BURLINGHAM: Same objection, all defendants.
MR. SPOONER: All defendants.

Q. I call your attention to this letter and ask you if you have ever seen it before?

MR. BURLINGHAM: You must have a dozen letters there.
MR. MONTGOMERY: Yes.
534 MR. BURLINGHAM: Any letters from Hard & Rand to Lamport & Holt offered in evidence subject to our objection.
MR. MONTGOMERY: You will admit this is a letter received by Hard & Rand from Lamport & Holt?
THE WITNESS: Yes.
MR. MONTGOMERY: I offer in evidence a letter dated 15th July, 1908 to Hard & Rand signed Lamport & Holt.
MR. KIRLIN: That last letter is objected to, the
535 same objection on behalf of all the defendants.
Marked Petitioner's Exhibit No. 116.
MR. KIRLIN: Same objection all defendants.
MR. MONTGOMERY: Also letter dated 19th August, 1908, to Messrs. Hard & Rand from Lamport & Holt.
Marked Petitioner's Exhibit No. 117.
Objected to by all defendants.

Q. These include some copies of claims for rebates, also. Any different objection to those?

536 MR. BURLINGHAM: No, same objection, all defendants.

Q. I call your attention to this "Notice to Shippers From Santos" that should have been marked for identification. It was not. Did you ever see that before? A. I think so. I have seen similar ones but I have not seen that.

Q. Sent to your firm in the course of business, offer of these lines to pay rebates under certain circumstances and conditions? A. Yes.

Q. "Notice to Shippers of Coffee from Rio de Janeiro" was also received from the signatory lines in the same way? A. I didn't receive it from them. We received it

from our firm in Brazil, presumably it was sent to them. 537
Q. Sent to you by your firm in Brazil? A. Yes.

MR. CRIM: Why don't you ask for an admission that those were identical with those already in evidence?

MR. BURLINGHAM: He said they were not in evidence. The stenographer afterwards, instead of saying "new exhibits" can refer to exhibits blank, way back.

MR. MONTGOMERY: What were the old exhibits that you had? 538

MR. BURLINGHAM: 11, 12 and 13.

Q. I call your attention to this paper marked "Memorandum of Agreement" and ask you what that is? A. It looks like an agreement between the steamship companies and the shippers in Santos.

Q. Is that a copy of an agreement that Hard, Rand & Company of Rio entered into with these lines? A. Presumably so, yes.

Q. It is a memorandum of agreement between Hard, 539
Rand & Company and certain steamship lines? A. Yes.

Q. And that was sent you by your Rio house? A. Presumably so, yes, I don't see how else we would have got it.

Q. And that agreement is dated blank, 1909, is it not? A. Yes, it is dated 1909, surely.

Q. Do you know whether or not that agreement is still in force, Mr. Creary?

MR. BURLINGHAM: Let's have a look at it if you are going to offer it. This does not appear to be even a copy. It is just a printed form, memoran- 540
dum, and it cannot prove itself. It has neither date nor parties nor signatures. It is made in some foreign place, I suppose. We object to that on the ground that it is not properly proved, as well as on the ground that it is irrelevant and immaterial.

MR. KIRLIN: With regard to all those notices to shippers and claims for rebates from Hard, Rand & Company or sent to Hard & Rand, they are not within the purview of the issues and are incompetent and irrelevant and immaterial.

"Notice to Shippers From Santos" marked Petitioner's Exhibit No. 118 for identification.

541 "Notice to Shippers From Rio de Janeiro" marked Petitioner's Exhibit No. 119 for identification.

Memorandum of Agreement between Hard, Rand & Company and Lines marked Petitioner's Exhibit No. 120 for identification.

By Mr. Crim:

Q. Is your concern receiving sums of money as rebates from shipments from South America to the United States?

542 MR. KIRLIN: Objected to as immaterial.

A. Indirectly.

Q. From whom did you receive these sums of money?

MR. KIRLIN: Same objection.

A. I could not tell you.

Q. All that you know is that you received sums of money?

MR. KIRLIN: Same objection.

543 A. Yes.

Q. And those shipments have come from what lines? A. Shipped by those lines mentioned there—conference lines or syndicate lines.

Q. The Prince Line? A. That is one of them.

Q. And the Hamburg-American? A. That is one.

Q. Hamburg South American? A. I don't know.

Q. Lamport & Holt? A. Yes.

Q. And how long have you been receiving these rebates?

MR. KIRLIN: May it be understood that this whole
544 line of questioning is subject to the same objection.

A. I could not tell you.

Q. Have you received sums of money during the past year? A. I would be very much surprised if we had not.

Q. During the past five years? A. Yes, past ten years, twenty years.

Q. What are those sums of money predicated upon, percentage and the excess of freight? A. Yes, what we get now.

Q. And what was formerly the basis? A. Different basis, different arrangements.

Q. That is, the arrangements would change from time to 545
time as to the amount of the rebate? A. Yes.

Q. Will you look at those papers and tell me if they state the terms as you recall them? A. Since 1908 and 1909, is it not the date of those?

MR. BURLINGHAM: Yes, it is 1909.

MR. CRIM: Witness is referring to Exhibits 120, 118, 117 and 116.

MR. KIRLIN: Now, is he referring to that?

MR. CRIM: That is what you referred to when you said that those papers state the conditions when 546
you received those sums of money as rebates?

THE WITNESS: Yes, that is right.

Q. And how are those sums of money paid to you, in cash or by check? A. I think everything is by check.

Q. And whose business is it in your concern to handle money? A. Mr. Waddell.

Q. He is the one who would be familiar with the details of that branch? A. That is right.

547

By Mr. Montgomery:

Q. I call your attention to this book and ask you if you can tell me what that is?

THE WITNESS: It looks like a ledger, doesn't it?

Q. Hard & Rand's ledger? A. Yes.

MR. BURLINGHAM: It looks still more like it. (Witness opened book.)

Q. Do you know whether this is Hard, Rand & Company's 548
ledger? A. Yes, I know it.

MR. BURLINGHAM: It has been proved already by Mr. Purcell.

THE WITNESS: This gives you the way the rebates were made, doesn't it. This seems to give you all the particulars.

Q. Yes, but I have a memorandum. I call your attention to the entry of January 10, 1910, "Lamport & Holt Line, Busk & Daniels, agents, $13,657.18," and I ask you what

549 that means in that ledger? A. I suppose it is rebates from freight received from them.

Q. Does that mean that rebates upon freight shipped by the lines, Lamport & Holt, Hamburg-American and Prince? A. I could not tell you.

Q. Paid you $13,000 through Busk & Daniels? A. I should think it was only for the Lamport & Holt, I don't know.

Q. You mean that this is a rebate paid for loyalty to those lines during a stated period? A. Yes.

550 Q. Because you have not shipped by any other lines than theirs, the Lamport & Holt and the Hamburg-American? A. Whatever the lines were; I am not familiar with them.

Q. In other words, it is paid in fulfillment of the agreement of 1909 that we have just had? A. Yes.

MR. BURLINGHAM: All that is subject to the same objection.

MR. MONTGOMERY: That agreement, Exhibit 120 for identification.

MR. KIRLIN: No, that refers to the other agree-
551 ment.

MR. BURLINGHAM: Notice to Shippers.

THE WITNESS: It would not be this one because this is dated August, 1910.

MR. KIRLIN: He is referring to Petitioner's Exhibit No. 120, Mr. Stenographer.

(Mr. Montgomery hands witness Exhibits 118 and 119.)

Q. You would say that these rebates were paid pursuant to the "Notice to Shippers," Exhibit No. 118? A. Yes, 118
552 and 119.

Q. To those two arrangements? A. Yes, but not for that year, a later year, I should think.

Q. These are dated, most are dated 1908, are they not? A. Yes.

Q. Exhibit No. 120 I see is dated 1909—why do you say that is not that ageement?

MR. KIRLIN: It is not dated at all, Mr. Montgomery.

THE WITNESS: We could not have collected a rebate in January, 1910 from arrangements of August.

MR. MONTGOMERY: The August date that you speak

of is not on the page of the agreement but is on the annexed form for claiming the rebate. 553

MR. CRIM: Show him the date that you have in mind.

By Mr. Montgomery:

Q. The date, blank, 1909, is the date on the agreement on the second page? A. That is right.

MR. BURLINGHAM: It may have been the 31st of December. 554

Q. Do any of these other entries show the payment of rebates to Hard & Rand on freight? A. I should think they all did; don't they say so?

Q. All on the Brazilian business? A. Rebate on shipments from Brazil to New Orleans. They came into our books January 6th, 1910.

Q. Where was that payment made according to the books? A. London.

Q. How much is it? A. Three hundred and sixty pounds, nine shillings and nine pence, $1,774.76. 555

Q. January, 1910? A. Yes.

MR. MONTGOMERY: I would like to have this book marked for identification.

Book marked Exhibit No. 121 for identification.

By Mr. Crim:

Q. What is Hard & Rand, a co-partnership or corporation? A. Co-partnership.

MR. BURLINGHAM: Let me interrupt you, that is all shown by Mr. Purcell. 556

Q. Are these rebates received from London? A. London, credit Brazil through us.

Q. You received some of these payments from Busk & Daniels here? A. Apparently so, yes.

Q. That is a common thing? A. That is a question of finance for the company.

Q. It is a common thing?

MR. BURLINGHAM: Objected to.

MR. KIRLIN: Objected to, all defendants.

557 Q. Would you say once a year? A. I could not tell you anything about it but the whole record is there.

Q. That would show all the payments by Busk & Daniels? A. Yes.

By Mr. Montgomery:

Q. I ask you to look at this letter in letter book, Exhibit No. 111 and tell me whether this is your signature, page 160? A. Yes, it is.

Q. Is that a copy of a letter sent by you to Lamport &
558 Holt? A. It is signed by me, and probably dictated.

MR. MONTGOMERY: I offer that in evidence.

MR. KIRLIN: Let me see what that is about. (Mr. Montgomery hands letter book to Mr. Kirlin.)

MR. KIRLIN: We object to it on the same grounds last stated.

Marked Petitioner's Exhibit No. 122.

Hearing adjourned to Monday, January 13th, 1913, at ten thirty A. M.

559

New York, January 13, 1913.

By consent of counsel, hearing adjourned to Monday, January 20th, 1913, at 11 o'clock A. M.

New York, January 20, 1913.

Hearing adjourned without date.

New York, January 28, 1913.

560 Hearing resumed pursuant to adjournment.

Appearances:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

Others same as last hearing.

JAMES H. WADDELL recalled: (Previously sworn at page 21).

DIRECT EXAMINATION by Mr. Baldwin:

Q. You are the manager of the firm of Hard & Rand, I understand? A. The office manager in New York.

Q. And you have held that position how long? A. I 561
have held it now about five or six years.

Q. Now, as that office manager is it a part of your functions to have a general supervision of the business of the office? A. It is.

Q. And you take cognizance of and know about the shipments from Brazilian ports and other South American ports to the firm of Hard & Rand by some or all of these conference companies? A. I do, yes.

Q. For instance, when a shipment of coffee arrives here it is part of your duty to see the number of bags that 562
arrive? A. Yes, and in a general way supervise it.

Q. And you say in the course of any given period of time it is a part of your business to know how many bags have arrived from any of the Brazilian ports of coffee? A. Yes.

Q. Who represent the firm of Hard & Rand in Rio? A. Hard, Rand & Company, the name of the firm is.

Q. And who is their representative there? A. Mr. J. E. Johnson, Jr.

Q. How long has he represented them? A. On and off for a great many years; as much as twelve to fifteen years 563
I should think.

Q. And as that representative he has full authority with reference to making commitments of coffee for shipment to this country? A. Yes.

Q. And likewise abroad, I suppose? A. Yes.

Q. Now, have you any representative at Victoria? A. We have, yes.

Q. And what is his name? A. Bryan Barry.

Q. How long has he been there? A. I should think he has been there twelve years.

Q. And who represents your firm at Santos? A. Joseph 564
D. Pardow.

Q. How many representatives have you in Brazil? A. We have a branch house in Sao Paulo.

Q. And who represents you there? A. Sidney F. Cox.

Q. Are all of those branch houses under the supervision of Mr. Johnson at Rio? A. All of them, yes.

Q. So that any transactions they make with reference to the purchase of the coffee are reported first to your Rio Janeiro house to Mr. Johnson? A. Not each transaction. It would be only the business in a general way supervised by Mr. Johnson.

565 Q. Now, what particular port do Hard & Rand export from; that is to say, from Brazil? A. Rio, Santos and Victoria.

Q. And in each one of those places the representative there makes the arrangement with the steamship company for the amount, I suppose, required and the number of bags to go? A. Yes.

Q. And under whatever arrangements he makes, the coffee comes here or to New Orleans, according to the place at which it is to be delivered, is that right? A. Yes, sir.

566 Q. I understand your business is confined entirely to coffee? A. Entirely.

Q. You do not export from this country to Brazil, do you? A. No.

Q. Mr. Waddell, I show you exhibit No. 119, which purports to be the notice to the shippers with reference to coffee from Rio Janeiro and Victoria; you recognize that, don't you, as something produced from your files? A. Yes, sir.

Q. That is the files of Hard & Rand? A. Yes.

567 Q. Do you know whether or not this was the original notice or whether this is a copy that has been furnished your office by your representatives at Rio or Victoria? A. That is one of the copies.

Q. Furnished to you for the purpose of informing the firm here of what shipments obtain between Hard & Rand and these conference lines and their associate conference lines in the business from Brazil to this country and Europe? A. Yes.

MR. KIRLIN: The relation of Hard, Rand & Company.

568

Q. Is it called Hard, Rand & Company in Brazil? A. In Brazil it is all Hard, Rand & Company.

Q. Is that due to some peculiarity of the Brazilian law that requires that? A. I believe so; I believe if it is only by the name of Hard & Rand there would have to be a Hard or Rand down there.

Q. You would have to have some resident number, is that the idea? A. Yes, sir.

MR. KIRLIN: It is a different co-partnership, it is a separate entity, isn't it?

THE WITNESS: No, there is no special co-partner- 569
ship.

Q. Let me see if I can clear the way. Hard & Rand of New York have a branch house in these places that you have testified to? A. Yes.

Q. And by reason of the Brazilian law they must have some person there who is interested in the firm, is that the idea? A. That is the idea, yes.

Q. But for all intents and purposes of the business Hard & Rand, the partnership business down there is the part- 570
nership business of Hard & Rand here, is that right?

MR. KIRLIN: I object to that.

MR. SPOONER: That is not a proper question.

MR. BALDWIN: I can put the question. Let him answer. If you think it objectionable state your objection.

A. Hard, Rand & Company in Brazil are the branch house of Hard & Rand in New York.

Q. Hard, Rand & Company of Brazil is composed of Mr. 571
Hard and Rand of New York, members of the firm of Hard & Rand, New York, isn't it? A. Members of the firm of Hard & Rand, yes.

Q. And who is the company; or, who constitutes the company? A. The company at the present time would be the resident partner down there.

Q. Who is the resident partner down there? A. J. E. Johnson, Jr.

By Mr. Kirlin: 572

Q. Is he a partner of the New York house? A. He is, yes.

By Mr. Baldwin:

Q. He is also a parner in the New York house? A. Yes.

Q. So that then the fact is that here the name of the co-partnership is Hard & Rand, but in Brazil its name is Hard, Rand & Company? A. Yes.

Q. And yet it is the same co-partnership? A. The same co-partnership.

Q. We will take Exhibit No. 119 that I called your at-

573 tention to "Notice to Shippers." As I understand, then, in the course of business they send you and you receive here this Notice to Shippers, a copy of that which they received there? A. Yes.

Q. Your purpose is to keep I suppose as near as possible on your files the duplicate memorandums and documents that are filed there, is that right? A. Yes.

Q. And I call your attention now to Exhibit No. 120, which purports to be upon its face an unsigned copy headed, "Memorandum of Agreement" with reference to
574 rebates from Rio and Victoria to the same ports; that is also produced from the files, is it? A. Yes.

Q. And that likewise is a copy which your office received from your representatives in Rio? A. Yes.

Q. Mr. Waddell, have you in New York any letter accompanying that, or does the memorandum—or just how do you come in possession of it? A. That I don't know. It came in the regular course of the mail as a copy of the agreement or new contract; whether it was signed at the other end or not I do not know.

575 Q. But this notice to shippers——

MR. KIRLIN: Your letter will show that?

THE WITNESS: We do not receive any regular letter with these things. I showed Mr. Montgomery a memorandum yesterday that I received with one of these similar agreements and it only states they are enclosing it.

Q. This memorandum of agreement, number 120, together with the notice to shippers, Exhibit No. 119 was
576 kept in your office for the purpose of apprising the firm of the conditions under which Hard & Rand and are claiming rebates for shipments to the United States and Europe, is that right? A. Yes.

Q. And upon which you relied in the course of your business with these conference companies? A. Yes.

Q. Now, Mr. Waddell, I show you now Exhibit No. 118, which is the notice to shippers from Santos; that is also produced from your files I suppose? A. Yes.

Q. And received from your Rio house in the same way as a copy of the notice under which they were operating? A. Yes, sir.

Q. Do you know anything about an agreement which was 577
made subsequent to and dependent upon this notice? A. I think that there were some supplementary notices after that.

Q. I show you what purports to be a supplementary notice, will you look at it and state whether or not you have ever seen that before and where you produced it from? A. Yes, this is one of the supplementary notices.

Q. I notice Exhibit No. 118 purports to be dated July 15th, 1908; that is the supplementary agreement that followed after this Exhibit No. 118 that I mentioned a moment 578
ago at Santos? A. Yes.

Q. And you received that, I suppose, from your house in Brazil in the same way for the purpose of your files and to apprise you of the situation there? A. Yes.

Q. This is precisely in the form in which you received it I suppose? A. Yes, it is.

Q. And this that purports to be claim for rebate attached thereto is likewise in the same form? A. Yes.

Q. That all came together, did it not? A. All together, yes. 579

Q. In other words, the signatures that appear here, I mean to say the typewritten signatures, they are all there just as you received them? A. Just as we received them, yes.

Q. I will ask you what this means, the word "approved;" do you know what that means at the bottom, Society Financiere— I am not familiar with French enough for that? A. Franco Brazilian Finance and Commercial Society.

Q. For instance, I notice—you take for instance, "By 580
authority of the combined lines" and " E. Johnston & Company, Limited, agents of the Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft"; who is this Johnston Company? A. They are merchants down there.

Q. Do you know who is Zerrener Bulow & Company; who are they? A. They are merchants down there.

Q. And each one in turn seems to be agent for one of these steamship lines, or some steamship lines? A. Yes; that is regular for a merchant to do.

Q. Also an agent for the steamship company? A. Yes.

Q. And Theodor Wille & Company, agents of the Hamburg Amerika Line; are they merchants too? A. Yes.

581 Q. And also agents for that line down there? A. Yes, sir.

Q. And that is the usual thing, is it? A. Yes, that is quite common.

Q. Now, E. Johnston & Company, Limited, agents of the Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft Line? A. They are merchants down there.

Q. And George W. Ennor, agent of the Royal Mail St Packet Company? A. I don't know whether he is a merchant or not.

582 Q. But you know he is agent of that line down there, do you? A. Yes, as far as I know.

Q. This, "Approved Societe Financiere et Commerciale Franco-Bresilienne"——

MR. KIRLIN: What does the signatures underneath the word indicate, that the parties down there agreed to the terms of the circular; is that what you gather it to mean?

THE WITNESS: That is what we gather; the agents of the lines——

583 MR. KIRLIN: The agents of lines which the circular and whatever there is more approved, followed by a lot of signatures?

Q. The words on that just shown are the signatures of the lines through their agents and the wording "approved" follows this French society and then the names of various shippers I take it, the names that appear on page three of this supplementary notice, are they the names of shippers whom you understood signed and ap-
584 proved of the arrangement set forth in that supplementary notice? A. So I understand those.

Q. The French Society are also shippers, aren't they, this name here at the bottom of the page? A. That is a firm that I am not personally acquainted with.

MR. BALDWIN: I offer this in evidence.

Marked Petitioner's Exhibit No. 123.

MR. KIRLIN: We object to it on the ground that it appears on the face of it to be a contract or agreement or basis for a contract or agreement made abroad, to be performed abroad, and as not within the purview of the statute upon which this action is

585

By Mr. Kirlin:

Q. Was your firm signatory to that last letter? A. At Santos?

Q. Yes. A. That I don't know. Oh, I thought you spoke of the supplementary. We are on here, yes; as far as I know it was signed by them; their name is on the copy sent to us.

Q. What is the name? A. Hard, Rand & Company.

By Mr. Baldwin.

Q. I show you what purports to be a Santos supple- 586
mentary notice to shippers under date of September 1st, 1909, and ask you whether or not you have produced that from your files? A.Yes, sir.

Q. You received that in the same manner as you received these others from your Brazilian house? A. In the same way, yes.

Q. And in this form practically? A. Yes, that form.

MR. BALDWIN: And I offer that in evidence.

MR. KIRLIN: This seems to be torn along the edge; has it been detached from a contract or just taken 587
out of the files?

MR. BALDWIN: Just taken out of the files.

MR. KIRLIN: We object to this document as immaterial and irrelevant, upon the ground that it deals only with shipments from Santos to the ports of Antwerp, Amsterdam, Rotterdam and Rivers Waser and Elbe and is not binding upon the defendants Prince Line, Limited, and Lamport & Holt for the reasons above stated.

Marked Petitoner's Exhibit No. 124.

588

Q. You have already stated that you import here into this country most through New Orleans and New York, coffee? A. Yes.

Q. Nothing more? A. No.

Q. That is all you import? A. Yes.

Q. From 1908 down to the present time have you been confining your shipments of coffee from Brazil through the ports I have mentioned to all ports of the United States entirely to these four conference lines? A. We have, yes.

Q. And the shipping transactions have been in pur-

589 suance of—as far as the representatives are concerned—from Santos and from Rio and Victoria in pursuance to these exhibits you have identified? A. Yes, sir.

Q. In as far as they apply? A. Yes.

Q. Where is the rate per bag, the carrying rate per bag arranged for? A. Well, I don't know; it is arranged between the conference lines as far as I know.

Q. And Hard & Rand? A. Hard & Rand has nothing to do with the arrangement of the rates.

Q. When Hard & Rand want to make a shipment of coffee
590 to the United States from Brazil where do they ascertain the rate? A. They pay the same rate, the public rate, that everyone pays; it is known what the rate is.

Q. In other words, it is a public rate established by these conference lines? A. Yes.

Q. And it is the same in which—I mean the same rate on any one of the conference lines ships? A. Yes.

Q. To New York or New Orleans as the case may be, the same rate? A. The same, yes.

Q. For the purpose of your shipments, we will say in
591 Brazilian ports, where do you deliver your coffee? A. We deliver it to the wharf.

Q. And does the line that takes that particular shipment take it from the wharf and place it in their own hold? A. Yes.

Q. At their own expense? A. At their own expense.

Q. And where do they deliver it? A. They deliver it on the dock or wharf and in New Orleans.

Q. Now, whatever rate that you pay, this uniform public rate that you have spoken of, that includes then not only
592 the carrying charges, but the charges of loading, taking from the dock, stowing, and, when it arrives here, delivering it to you upon the dock? A. Yes.

Q. And at New Orleans likewise, is that right? A. Yes.

MR. KIRLIN: I would like to have that question read again. (Question read.) You mean by that the freight rate covers all of those charges?

Q. In other words, that freight rate covers all of those charges? A. Yes, sir.

Q. What, if anything, did you do here to keep track of the number of shipments that are made to you by these confer-

ence lines and in New Orleans likewise, and the number of 593
bags of coffee that you receive in each shipment; what is the *modus operandi?* A. Each shipment as it arrives is noted in a book; the number of packages and the rate, freight paid.

Q. And the freight paid? A. Yes.

Q. And New Orleans likewise? A. The same way.

Q. And what, if anything, did you do here for the purpose of determining what you claim to be your amount of rebate that you are to receive from conference lines, to ascertain it in advance? A. It is determined according to the 594
number of bags shipped.

Q. What I want to bring out is this: you keep an account of your shipments, that is upon your books, and what, if anything, did you do there for the purpose of estimating or anticipating the rebates which you would be entitled to if you were loyal under these notices and agreements? A. We estimate according to the agreement that we have before us.

Q. But you here in New York keep track of the number of bales in order that you may here estimate the amount 595
of the rebate to which you may make claim under these agreements and notices? A. We used as a check to make sure our claims as they go in are correct according to the number of packages as they are issued here.

Q. Where is the claim for rebate made up for claims of freight? A. Made up in Brazil.

Q. And by your house in Brazil? A. Yes.

Q. Would it be made up by the Rio house or each one of the respective houses where there is a port of export? A. Santos may add the claims for their port and Rio for ship-
ments from Rio and Victoria. 596

Q. To whom do they send them and where? A. They send them over to Europe.

Q. To the home office of each one of the conference lines, is that the idea? A.Yes.

Q. And then they also send you here a statement of what those rebates amount to? A. Yes.

Q. The amount of rebates to each line, or for each line? A. Yes.

Q. Then you take up here, do you not, to see whether or not those claims tally with your own? A. Yes.

597 Q. Under these agreements how often are those claims made up? A. Once a year.

Q. And it covers a period—what period of time? A. It covers the full twelve months.

Q. Prior to that? A. Yes.

Q. That also applies to the shipments that Hard & Rand make to Europe from those Brazilian ports? A. Yes, under those agreements.

Q. Either with any of these conference lines or what is known as their associated conference lines in the Brazilian
598 business? A. Yes.

Q. Where are the payments made and how? A. I think all payments have been made in Europe except some payments that were made through Busk & Daniels here on order from the other side.

Q. You say all payments, you mean since 1908 up to the present time, that all the payments have been made in Europe, made to Hard & Rand? A. To Hard & Rand, London, except some payments by Busk & Daniels.

Q. Then you have a representative in London, have you?
599 A. We have a house in London.

Q. For instance, payments made by the Prince Line, where would Hard & Rand get their rebates from the Prince Line? A. They are paid to our London office.

Q. And with reference to the German Line in the conference, the Hamburg American and the other German lines combined with it? A. They are all received over there.

Q. You also receive those in London? A. Yes.

Q. Do you mean to say that Hard & Rand send their
600 claim in the form provided by the conference lines to the home offices over there? A. Yes.

Q. And then they remit from the home office to Hard & Rand in London, is that the idea? A. As far as I know that is the system.

Q. Now, haven't there been a number of deviations from that rule since 1908? A. I say Busk & Daniels have paid us rebates here on orders from Lamport & Holt on the other side.

Q. Haven't any of the other conference lines paid your company, Hard & Rand in this country? A. I don't know; I don't remember. The Hamburg American Line may have paid one or two claims; I am not certain of that.

Q. Can't you ascertain that? A. I can, yes. 601

Q. Have you looked up your records to know when it was Busk & Daniels for the Lamport & Holt Line made any payments here in this country? A. I think they made payments to us last December.

Q. And how much and covering what period? A. Covering the period up to August 31st, 1912.

Q. Was that in one payment or were there a number of payments? A. In one payment.

Q. How much did it amount to? A. I think I am wrong there, I think it was in more than one payment; I haven't 602 the particulars here of the number of payments or the time, but some part of the payment was received in December, I know.

Q. Last December? A. Last December. December, 1912.

Q. Do you suppose that you could get that information for us by the time we come back from recess? A. Yes; it is only a question of looking at the ledger; it shows right there.

Q. You might bring your ledger over with you because we might have to refer to it for something? A. Yes; I 603 would have to have a truck to bring them. What I was going to say, this payment I spoke of last December is not in the ledger; that is up here; it is in our current ledger that we did not send up here. Do you want the current ledger?

Q. Bring whatever is necessary so that you can make an exact statement about the payments by Busk & Daniels in the way of rebate for the Lamport & Holt Line? A. All right.

Q. Now, the rebates that you get under these agreements and notices already in evidence, as I understand it is ten 604 per cent., is it? A. That is the maximum.

Q. Have you made a compilation of the amount of rebates that have been paid to Hard & Rand for coffee received from these Brazilian ports by these conference lines in 1908? A. Yes.

MR. KIRLIN: We object to all this evidence about the receipt of rebate from conference lines on northbound business, as immaterial and irrelevant and paid in pursuance to agreements made abroad, performed abroad, and not within the purview of the issues or of the statute. We would like it under-

605 stood that all the testimony along this line is subject to that objection so that we need not repeat it?

MR. BALDWIN: Precisely.

Q. Have you—— A. I have a memorandum here.

Q. Take, for instance, the Prince Line, give the amount of rebates that have been paid Hard & Rand from 1908, giving the totals for each year up to the first of this year? A. I only took those from Rio and Victoria from 1909; that is when our contract agreement dated from.

606 Q. Well, from 1909? A. I have it by ports here; each year.

Q. Just state what it is? A. These are only made up by ports; I have it at Rio, and Victoria together to give you the figures that you want.

Q. State it by ports and then give the total? A. For the year 1909-1910, shipments from Rio, $1,302.36.

Q. You mean that is rebate? A. Rebate, yes; for the same period from Victoria $1,145.46. For the year 1910-1911, Rio $1,624.07, and from Victoria $1,596.55. For the year 1911-1912, Rio $1,008.76, Victoria, $2,489.94.

607 Q. That is for what year? A. 1911-1912.

Q. Has any claim for rebates been paid for the year 1912? A. Yes.

Q. What are they? A. They are the amounts that I have stated.

Q. Now, state 1911? A. 1911-1912, to the last of August.

Q. What do those total? A. The total amount of it is $9,167.24.

Q. Take up the Lamport & Holt line; what is your first year there that you have? A. From Rio and Victoria

608 I only have from 1909.

Q. Well, state what that amounts to? A. The year 1909-1910 from Rio $7,946.53; Victoria, $4,534.95. 1910-1911, Rio, $3,315.82; Victoria, $2,850.75. 1911-1912, Rio, $4,678.92; Victoria, $1,374.40.

Q. Totalling how much? A. A total of $24,701.38.

Q. Take these two German lines? A. 1909-1910 from Victoria Hamburg South American Line, $192.55; Hamburg-American Line, $45.85. Nothing from Rio that year. The year 1910-1911, Rio by the Hamburg South American Line, $36.34; and by the Hamburg-American Line $207.65. From Victoria for the same year nothing. 1911-1912, nothing on those lines.

Q. And that total aggregates how much? A. A total of 609
$482.39.

Q. Turn back to the Lamport & Holt, what was the amount for 1910; how much does that rebate total? A. 1910-'11?

Q. No, for the year 1909. A. For 1910?

Q. Yes. A. At Rio, $7,946.53.

Q. And from Victoria? A. $4,534.95.

Q. Now, Mr. Waddell, I show you letter press copy book and call your attention to page 196, copy of letter under date of January 19th, 1910, and ask you whether that will 610
in any way refresh your recollection about other payments made by Busk & Daniels here on rebates? A. No, I don't think it does. But I am certain other payments have been made by them anyway.

Q. From 1908 down until the present time the rates established by all these conference lines to the United States have been uniform with the company, that is to say, I mean uniform with all? A. Yes.

Q. And you have confined your shipments entirely to those conference lines? A. Yes.

Q. And these rebates that you have mentioned here have 611
been received by Hard & Rand in pursuance to claim made under these agreements and notices? A. Yes.

Q. And the rest of the rebates were likewise established under these agreements and notices? A. Yes.

Q. Now, these rebates are based upon so much per bag, aren't they? A. Rebates are on a percentage basis.

Q. You mean percentage of the amount of the shipment? A. Percentage of the total freight paid.

Q. That is to say, then, that it is based—rebate is based upon the total freight which includes the loading and the 612
unloading and the carrying, as you stated before? A. Yes.

Q. Hard & Rand dispose of their coffee almost entirely in the United States, do they not, which they receive from Brazil? A. No, a very great deal of it is shipped to Europe.

Q. All that comes from Brazil over these conference lines is practically disposed of in the United States? A. Practically all of it, yes.

Q. Have you made up any statement of the amount of coffee that you have imported here during the respective years? A. I have the figures here.

613 Q. And over the respective lines? A. Not the separate lines.

Q. Give us the total anyhow at the present time, each year? A. That is, on the basis on which these rebate statements were made up?

Q. Yes. A. I have this by ports too.

Q. All right, just state it. A. From Rio the year 1909-10, 251,685 bags; and Victoria 161,075 bags and Santos 366,451 bags. For the year 1910-11 Rio, 125,455 bags, Victoria 108,532 bags, Santos 272,601 bags. For the year 1911-12,
614 Rio 133,014 bags, Victoria 90,525 bags, Santos 243,564 bags.

Q. Does that mean to New York, or to New York and New Orleans? A. To New York and to New Orleans.

Q. Have you any distinct amount showing how much New Orleans and how much New York in that time? A. No.

Q. Can you get that? A. It will take some little time to figure it up.

Q. You have no means even of approximating about the amounts that come to New York as against the amount that comes to New Orleans? A. No, I couldn't tell.

615 Q. Any ratio by which you can give round figures? A. No.

MR. KIRLIN: It must be a very much smaller portion I guess to New Orleans?

THE WITNESS: A good deal of the coffee shipped out west goes via New Orleans; it is a very big port at New Orleans. They get shipments there now that used to come to New York.

Q. I will have to ask you, Mr. Waddell, if you won't ascer-
616 tain that for us? A. For these years?

Q. Yes. If you cannot do it to-day, and you probably cannot, because you will be busy here a good part of the day, why after the meeting we will take it up? A. Yes.

Q. When it comes to sell your coffee here that you have received over these conference lines from Brazil how do you arrive at your selling price; what do you take into consideration? A. The selling price, all we consider is the market and the price we wish to sell at.

Q. What market do you refer to? A. I refer to both markets, the producing market and consuming market; we have to consider all conditions.

Q. When you speak about the market here you mean the market as manifested upon the coffee exchange here in New York? A. Well, we have to figure on what actual sales can be made at in the course of business. 617

Q. Don't you fix your selling price basis upon the market for futures here on the New York Coffee Exchange? A. No; we deal in actual coffee.

Q. What did you mean when you said a moment ago that you have markets here, that is the producing market and the selling market; what did you mean by that? A. The producing market in this case would mean the Brazil market; the market from which we buy coffee, and the selling market would be the market from the United States. 618

Q. You have stated that you had in mind that, but how do you utilize those market prices for the purpose of establishing your selling price here to the American public? A. I have nothing to do with the actual fixing of selling prices.

Q. But you know the *modus operandi*, don't you? A. I think it would be impossible unless I know all the conditions at the time just what we fixed the price. We are not compelled to sell at any price. 619

Q. Is there any truth that for the purpose of your selling price you take into consideration the cost of the coffee to you in Brazil, to which you add your carrying charges; you testified to it, isn't that right? A. Yes.

Q. You take those two elements into consideration naturally, don't you? A. We have to do that to figure the cost here in the United States.

MR. SPOONER: Are you cross-examining the witness? 620

MR. BALDWIN: No.

MR. SPOONER: I think you are.

MR. BALDWIN: I don't think so. The only way is to object; I don't want to make my questions objectionable, and I will try to be as precise about that as I can.

Q. You do consider the purchase price and you do take into consideration the purchase price and the carrying charges, don't you? A. Yes, to find out the cost here in the United States.

621 Q. And in fixing your selling price and selling your coffee to the American public, those are naturally taken into consideration? A. They are taken into consideration.

Q. From 1908 down to the present time the carrying charge or the rate, has been the same in each company over which you have shipped your coffee to the United States ports; you have already testified to that? A. It has been the same in all companies.

Q. Each year, if there was a change in the rate the same change would be with reference to all these four conference
622 companies? A. Yes.

Q. Now, do you know of any instance of facilities, that is to say, steamers being offered to Hard & Rand for the shipment of their coffee from any of these Brazilian ports to the United States? A. Yes, we know the rates quoted by the Lloyd Braziliero Line.

Q. How about the rates as quoted by them, have they been the same or less? A. No, I think—well, I haven't noticed much until the present time. Within the last few months they have been less; it was brought to my attention.

623 Q. As a matter of fact, haven't they been less for quite a period of time, reaching back for a couple of years? A. That I am not certain of.

Q. Have you any means of ascertaining that? A. I can ascertain it.

Q. I wish you would. Now, do you know of any particular instance where shipping facilities were offered to you at a less rate than the conference rates in Brazil? A. No, I don't know of any case.

Q. What has been the rate—the average rate—per bag
624 from Rio to New York from 1908 up to the present time? A. From Rio?

Q. Yes? A. It is hard to say. It has varied; varied from 25 cents up to 50 cents.

Q. What is it at the present time? At the present time it is 50 cents I believe.

Q. And how long has that rate been subsisting? A. I think for a couple of months.

Q. Do you know what the average rate has been for the year 1912? A. No.

Q. Could you give it approximately? A. I should think it is very near 40 cents.

Q. As a matter of fact, during the summer and fall wasn't 625
it as high as 55? A. No.

Q. Has it been at any time as high as 55? A. Not within the period that you mention.

Q. Do you know of any period from 1908 to the present time when it has been as high as 55? A. No, it never was as high as 55.

Q. But it has been as high as 50? A. It has been as high as 50.

Q. Has it been as high as 50 within the last year? A. It is, yes. 626

Q. And it has been as high as 50 in 1909, hasn't it? A. I don't know for certain, but I think not.

MR. KIRLIN: Nearer 25, I guess.

THE WITNESS: Yes, the rate was much lower.

Q. You do know, however, of the Lloyd Brazileiro offering facilities on their ships within the last year? A. Yes.

Q. And at rates less than the rates quoted by the conference lines? A. It was at that time.

Q. Do you know how much less? A. No, I don't remember now how much less. 627

Q. Was it as much as 10 cents a bag? A. I think it was, yes.

Q. Do you know whether or not your firm accepted those offers of that company at the lesser rate? A. I know that in this case we cabled the rate out to our Rio House, but no shipments were made under them.

Q. As a matter of fact they did not accept the rate, isn't that right; you did not accept the rate? A. No, we did not accept the offer.

Q. Do you know what that was due to, that they did not 628
accept it? A. No, I don't know.

Q. Isn't it due to the fact that you would not accept because of these agreements that you had made with reference to rebates?

MR. KIRLIN: He says he doesn't know.

A. All I know is that when Mr. Slechta made the offer the offer was wired out to our Rio House and no shipments were made by that line.

Q. Is there any person connected with Hard & Rand here who would know the reason why that offer was refused?

629 A. No, I think not. It is left to our Brazilian Managing Department in Brazil to decide how shipping shall be made.

Q. Any correspondence from him that would show the reason? A. No, I don't believe there is any correspondence from the files to show it.

Q. No cablegrams? A. No, as far as I know, none.

Q. Where was that offer made; was it made here in New York or where? A. The offer was made here in New York.

Q. This Lloyd Brazileiro has an office here, has it? A.
630 Yes.

Q. And you cabled this offer to your representative there? A. Yes.

Q. Have you a copy of that cable? A. We have it on file.

Q. I would like to have you produce it, if you will. You at one time was stationed in Brazil yourself, were you not? A. Yes.

Q. And as the representative or connected with Hard & Rand or Hard, Rand & Company? A. I was connected with the Rio House.

631 Q. And for how long? A. I was in Brazil altogether for three years.

Q. Have you any recollection with any definiteness at all about what the rate was per bag from Brazil to this country on these conference lines in 1908? A. What the rate was of these conference lines?

Q. Yes, over which you shipped your coffee in 1909 to this country? A. That is from 1908 to 1909 covering the whole year?

Q. Yes; can't you tell about these rebates? A. I can tell
632 more or less from these sheets I have here during 1908 to 1909; it varies from 25 cents to 35 cents with the majority of the rates at 25.

Q. Where were you in 1907? A. I was here in New York.

Q. Holding the same position with Hard & Rand? A. Yes.

Q. Do you know what the rates were in 1907? A. I don't know without looking them up.

Q. Were you here in 1906 and 1905? A. I was here from the beginning of 1905 and have been here since, barring short trips.

Q. You don't know, I suppose, what the rates were in 1905 and '06, any more than you did in 1907? A. No.

Q. Can you refresh your memory and state what they were? A. I can, yes. 633

Q. I wish you would be prepared to answer that——

MR. KIRLIN: I will object to the evidence upon any rates in 1905, 1906 and 1907, as outside of the scope of the issues.

Q. Now, Mr. Waddell, in making up your claims for rebates under these agreements at the time they were made up and sent to the Home office of the various steamship companies, they also embrace your claim for rebates for 634 coffee that was shipped to Europe over either of these conference lines, or their associated lines, the Royal Mail Steam Packet Company and the Hamburg American and the North German Lloyd?

MR. KIRLIN: We object to the suggestion of "associated lines." Have you any knowledge about this matter that you are being asked about now?

THE WITNESS: I know that certain shipments we make to Europe are covered by this agreement; not all of them, though; it is only to certain ports as 635 you see by our agreement there.

Q. I am speaking of these ports mentioned in these notices and agreements? A. Yes.

MR. KIRLIN: Isn't the claim made separately for rebate to the United States from port to port in Brazil to the United States and from port to port in Europe; isn't there a separate statement made up?

636

THE WITNESS: It is made up by lines.

MR. KIRLIN: The Prince Line has no service from Brazil to Europe?

THE WITNESS: No, there would be none for the Prince Line. The Lamport & Holt.

Q. In making your claim for rebate against the Lamport & Holt Line, did it not include the coffee shipped to the United States and coffee shipped to European ports mentioned in these agreements? A. It would not, no.

Q. Would it be made up separately? A. Made up sepa-

637 MR. KIRLIN: And it would be separate from each port?

THE WITNESS: Rio, Santos and Victoria; separate claims would be made for each port.

Q. They would be made at the same time and be made under these various agreements? A. Made up for the same periods.

Q. If these agreements provided that at a certain time they should be made up for the 12 months preceding
638 wouldn't they be made up at the same time for the rebates both to Europe and the United States? A. They are all practically made up at the same time, but separate claims.

Q. And in the course of business forwarded at the same time to the Home Office of the Lamport & Holt Line? A. Yes.

Q. That would apply to each one of these companies that did a European business and business with the United States, would it not; for instance, the Prince Line does not do any to Europe? A. No.

639 Q. And then it would apply to each one of these companies that had business both to the European ports and to the United States ports? A. Yes, but separate claims are made up for shipments to the United States and shipments to Europe, even by the same line.

Q. Do you know whether or not, that being made up separately, as you have testified to, is due to the additional 5% provided for in this supplementary notice? A. It is made up separately as the claim is made against each line separately.

640 Q. Is it due to the fact that you have to specialize because of this additional 5%? A. No, not that I know of.

Q. In estimating your claim for rebates here in your Home Office, you base it entirely upon the provisions of these agreements and circulars you testified to? A. Yes.

Q. So that when you make up your claims, or tabulate your claim, here for rebates for the purpose of taking up with your Brazilian representative they make up the claim and send it to the Home Office of the conference company, you do it upon the basis of these agreements and notices to which you have testified?

MR. KIRLIN: I object to that, the witness has not

yet testified that they said they did anything for re- 641
bates here.

A. Will you put that question again?

Q. You have already testified that for the purpose of checking up the claims for rebates against the conference lines by your Brazilian House that you take cognizance of the shipments as they arrive here? A. Yes.

Q. And you make up a claim here? A. No, we don't make up a claim here.

Q. What do you do then? A. We keep the particulars 642
here in memorandum form so that we may be able to see that the form as lodged by our Brazilian House is correct.

Q. Then, in making up this memoranda you base it upon these agreements and these notices, do you or do you not? A. We keep our records here based on these agreements.

Q. Precisely, and when you check up with the claims as formulated by your Brazilian representatives it is with reference to these agreements, is that so or not so? A. We check them up in conformity with the agreements.

Q. And upon the supposition that the rebates will be al- 643
lowed upon this basis, that is, as made up finally by your Brazilian House? A. Yes.

Q. A credit? A. Yes.

MR. KIRLIN: Not a credit; he has not said that.

A. And credited you say?

Q. Yes; do you or do you not find the fact to be that your checking up here does not tally with the claims made there before they are sent on to the Home Office? A. I don't remember any differences much except for a few bags here 644
and there perhaps where there has been a little difficulties in the footings or something of that kind.

Q. Then your representative in Brazil finally formulates the claim to be sent to the Home Office of these steamship companies; do you send on your checks to see whether or not they agree? A. No, they make their claims and then afterwards we check up to see if they are correct.

Q. You do it afterwards? A. Yes; we see that they are checked, that is all.

Q. Assuming that there should be a disagreement between the claims as made up and filed by them and your memoranda as you have testified to, what then is done with

645 reference to correcting it as far as the steamship companies are concerned?

MR. KIRLIN: He has not testified to any memoranda; all he has testified to is that he uses the entries in his books for checking up the claim that is made on the other side.

MR. BALDWIN: He makes memoranda in his books; that is what he says.

THE WITNESS: We keep a record in a book and in case there were differences we would probably take
646 the matter up with our London House for adjustment.

Q. And has that occurred frequently or not? A. No, I believe there were one or two cases that there was a question as to a difference in figures of a number of bags shipped by some different boats.

Q. Had the question been adjusted between you and the steamship company? A. Yes.

Q. And whatever adjustments had been made, assuming
647 there were adjustments? A. We do not attend to that, it is all done through our London House.

Q. It would be Hard & Rand just the same, wouldn't it? A. Yes.

Q. One other question, Mr. Waddell, the coffee that you have shipped from Brazil over these lines to New Orleans is practically all for American consumption, isn't it, just the same as to New York? A. Yes.

Recess taken until two o'clock P. M.

648 AFTERNOON SESSION.

JAMES H. WADDELL recalled.

DIRECT EXAMINATION by Mr. Baldwin:

Q. Have you been able to ascertain what the rates were in 1907? A. They varied in 1907, from thirty-five apparently down to ten cents.

Q. And what were the rates in 1906? A. I have not got 1906 here. I have not been able to get it yet.

Q. Now, what payments were made by Busk & Jevons, and Busk & Daniels, for the Lamport & Holt; have you found out those payments? A. They are in these ledgers

Q. (By Mr. Montgomery.) That is the freight ledger, 649
the other was the rebate ledger that was put in? A. The rebates from Lamport & Holt last December were paid in London. There was another one paid on the 27th of December for Lamport & Holt.

By Mr. Kirlin:

Q. Does that mean that you were mistaken this morning in saying that they were paid here?

By Mr. Baldwin: 650

Q. Mr. Waddell, you have already testified generally that the payments were made in London; now, I want the exceptions, when they were paid by Busk & Daniels or Busk & Jevons here? A. (Witness examining book.) There is a payment here, April 19, 1912 as——

Q. How much? A. $3,315.82.

Q. These are rebates on the Lamport & Holt Line for what period? A. Shipments from Rio, 1910 to 1911.

Q. Give us the period? A. The rebate period was September 1, 1910 to August 31, 1911.

651

By Mr. Montgomery:

Q. From Rio, did you say? A. Yes.

Q. Against Victoria's shipment on the same date? A. $2,850.75.

Q. From those two ports to both New York and New Orleans? A. Yes. There was another payment by Busk & Daniels on the 27th of December, 1910, of $12,481.48.

Q. And that was from what? A. It covers shipments from Rio and Victoria for the year ending August 31, 1910. That apparently covers everything. 652

Q. Back to what period; back to 1908? A. Back to May 1, 1909.

MR. KIRLIN: Now, we are still without that December payment which you referred to this morning.

MR. BALDWIN: He testified to the payment September 17, 1910, and the question is whether or not that was the one he had in mind.

MR. KIRLIN: Yes, that is what I want to clear up.

THE WITNESS: The payment, made in December, 1912 from Busk & Daniels; I mean to say we had received it, but not here.

653 MR. KIRLIN: That was an error.
THE WITNESS: Yes, I don't think I said that, though.

By Mr. Baldwin:

Q. Do you find a payment by Busk & Daniels in behalf of Lamport & Holt Line of a small item of $47.25 in March, 1910, separate and distinct from the one you mentioned for that year? A. Yes, $47.25. It was Busk & Daniels; that was March 7, 1910.

654 Q. And those are the only instances you find where the general rule has been varied? A. Those are the only ones that I see.

Q. Now, Mr. Waddell, you stated this morning that you knew of no instances where a rate of fifty cents a bag was charged in 1912? A. No, I don't think I said that. You asked me whether more than fifty cents.

Q. I also asked you as much as fifty cents? A. It has been fifty cents for the last two months.

Q. From what period? A. I think it was for a few months; in April and May of this year; I think it was as
655 much as fifty cents.

Q. Do you know whether or not there was any addition to the fifty cents per bag that was charged? A. Only the five per cent. primage on all the rates.

Q. That is on all? A. Yes.

Q. I think that you might just state shortly what primage is. Mr. Kirlin may know all about it and the Senator may, but I admit my own knowledge on it is very slight? A. I have no clear ideas as to what the original charge was intended for.

656 Q. It depends generally on all of those shipments from those South American ports? A. Yes.

Q. Now, with reference to 1907, are you able to state whether or not each one of those conference lines charged the same rate or whether there was between them a uniform rate in 1907? A. As far as I know the same rate ruled between all the lines in 1907, but the rates varied, of course, during the year.

Q. Whenever it varied, it varied as to all? A. It varied as to all.

Q. Now, the rates which were charged Hard & Rand, they were rates in which Hard & Rand were not in any way consulted? A. No.

Q. Arbitrarily fixed by the conference lines? A. As 657
far as I know.

MR. KIRLIN: Why arbitrarily?

MR. BALDWIN: Oh, well, we will argue that later.

Q. Mr. Waddell, I show you what purports to be statistics that have been published by Core & Herbert in New York, with reference to the arrivals in New York by various importers of coffee. Are you able to look at that and state what amount of coffee was imported by Hard & Rand in 1909, 1910 and 1911? A. Do you mean can I confirm 658
these?

Q. Yes. A. No, I could not tell, but if these are the official lists made up by Core & Herbert, they are correct.

Q. You recognize those papers? A. Yes.

Q. Who are Core & Herbert? A. They are forwarders and shippers, Custom House brokers.

Q. Do you know whether this is a publication that comes from them? A. That looks like their official list that they get up every year.

Q. And is generally circulated among shippers? A. Yes. 659

Q. Generally accepted as more or less correct? A. Yes.

MR. KIRLIN: Why don't you read right off from that?

MR. BALDWIN: All right, I will read right into the record from this statement. (Reading) "Hard & Rand, in the year 1909, for the calendar year, imported coffee at the Port of New York from the Brazilian ports, 616,228 bags, and imported at New Orleans 191,980 bags for the same period; and in the calendar year, 1910, they imported at the port 660
of New York, 249,142 bags, and at New Orleans 132,973 bags for the same period; in 1911, they imported 218,958 bags at New York, and at New Orleans 119,806 bags; and for the year 1912, that is up to December 31, 1912, they imported 224,090 bags at New York and 135,494 at New Orleans." We have got some other things that he has not been able to produce.

Witness excused until Thursday at two o'clock unless further informed.

661 WILLIAM LOWRY, called on behalf of the Petitioner, being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Lowry, have you ever made it a part of your business to ascertain what shipping facilities were open for the port of New Orleans and the Gulf ports for merchandise to be shipped to Brazil and South American ports? A. Yes, sir.

Q. What experience, if any, have you had with reference
662 to the shipping of merchandise from any of the Gulf ports to the South American ports, and particularly Brazil? A. Why, in the actual shipping to Brazil, solely as a representative of the Mississippi Valley, South America, and Orient Steampship Company. I loaded their first vessel and went down with it.

Q. Prior to that time, had you resided in Brazil? A. Not resided in Brazil. I have made several trips there.

Q. What years were you there? A. 1904, 1906, 1907 and 1912.

Q. Have you ever spent any considerable time there? A.
263 A few weeks at a time; two or three weeks at a time.

Q. Now, are you enough familiar with the facilities that are offered for a ship bringing merchandise from New Orleans and the Gulf ports and Mobile, to state whether or not, since 1908, there have been any lines there engaged in the transportation of merchandise from those ports to Brazil?

MR. KIRLIN: I should think we had better know what knowledge he has about it.

664 MR. BALDWIN: I will bring that out.

MR. KIRLIN: Somebody else may determine that.

THE WITNESS: During that time with the exception of 1909, I was in New Orleans, and there existed no regular line running from New Orleans to Brazil.

Q. And during that time you were in New Orleans what was your occupation? A. I was a shipper of lumber. I had an office at Mobile, one at Gulfport, and one in New Orleans.

Q. Shipper of lumber to what ports? A. Buenos Aires, and attempted to ship to Brazil, and never succeeded.

Q. What, if anything, was done while you were in New 665
Orleans, by which you had connection with securing facilities for imports for New Orleans from Brazil ports? A. I was employed by the men, or by an organization which was the result of business men of the Mississippi Valley in getting together to establish lines.

Q. State what the organization was and its purpose; is that what they call the Pan-American Mail? A. Yes, the merchants of the Mississippi Valley found that they did not have facilities to transport their products to Brazil and got together to form this line, for the purpose of tak- 666
ing care of their transportation.

Q. During the period that I have mentioned neither the Lamport & Holt Line nor the Prince Line, nor the Hamburg South American Line, engaged in carrying merchandise from any one of those ports to Brazil?

MR. SPOONER: He said that when he said there were no facilities.

MR. BALDWIN: I want to make it a little more distinct; now, what, if anything, did you do with reference to procuring vessels in 1912? 667

THE WITNESS: Personally I had nothing to do with procuring the facilities. I was employed by the people who had gotten this line organized.

Q. To do what? A. To go to South America to obtain coffee shipments from Brazil to New Orleans, if possible, and if not possible to find out why not.

Q. During the same period of time I have mentioned, what lines were engaged in carrying merchandise from the Brazilian ports, to New Orleans or Gulf ports? A. 668
Prince Line and the Lamport & Holt. I cannot state the exact year in which the German service terminated their business. I think that was 1908.

Q. Since 1908 just the Lamport & Holt Line? A. Yes, sir.

MR. KIRLIN: That is, to New Orleans?

THE WITNESS: Yes, and the Prince Line.

Q. Do you know the class of merchandise which those two lines have been carrying from Brazilian ports to these

669 two ports, New Orleans and Gulfport? A. Coffee is the only thing I have ever heard of them carrying.

Q. Now, you say, you were employed to go to South America in the interests of this line—did it have any name? A. It was the Mississippi Valley, South America and Orient Steamship Company.

Q. Now, that company was the result of efforts of the shippers that used these respective ports? A. It was really the effort of the civic bodies. The Progressive Union of New Orleans was the organization which started
670 this, and the Business Men's League of St. Louis assisted it, and it was business men who put their money in it.

MR. KIRLIN: It was a manifestation of local pride.

THE WITNESS: When you lose your money it is something more than local pride.

MR. SPOONER: They did not put it in to lose it.

THE WITNESS: They certainly did not.

Q. Now, you can state just when that company was formed? A. I could not give you the exact date. It be-
671 came a going concern approximately in May, 1912.

Q. And when did you go to Brazil? A. We left New Orleans on the 2nd of July.

Q. How did you go? A. I went on the first boat.

Q. What do you mean by first boat? A. The first boat which took a cargo from New Orleans to South America.

MR. KIRLIN: On that line?

THE WITNESS: Yes.

Q. What was the name of that boat? A. The *Inkum.*

672 Q. Was that a boat chartered by this line? A. Yes.

Q. Did it take any merchandise to Brazil? A. Yes, it took about 2,500 tons, about 2,800 tons approximately; rails and lubricating oil. I don't remember anything else.

Q. Now, you accompanied the boat to Brazil; to what port? A. Rio.

Q. What time did you arrive there? A. We arrived in Rio via Buenos Aires. We touched at Buenos Aires first on September 6th.

MR. KIRLIN: Via Buenos Aires.

Q. In other words, you went to Buenos Aires first, and then back to Rio; is that it? A. Yes.

Q. And when you arrived at Rio what, if any effort, did you make to get a cargo back to New Orleans? A. Why, we had an agent there who quoted a rate of 30c a bag for coffee to the various shippers at Rio and Santos, and he informed me he had got no engagements. In pursuance to instructions, I visited the various shippers. 673

Q. What shippers did you see, and with whom did you come in personal contact? A. I saw Mr. Johnson of Hard & Rand.

Q. Is that the Johnson mentioned by Mr. Waddell this morning? A. The same Johnson. I saw the head of the firms of Pinto & Company, Oscar Marquez, Hugho Ornstein, McKinley Schmidt, Eugene Urban, Castro Silva & Company, Arbuckle & Company and probably some others. I do not remember all the names this minute. 674

Q. Do I understand that your agent before had gotten there had offered this flat rate of 30c? A. Yes.

Q. A bag? A. Yes, sir.

Q. That is to New Orleans? A. Yes, sir.

Q. Did you ascertain when you were down there what these conference lines—what their rate was at that time? A. I ascertained it but I don't remember exactly whether it was 45 or 50. 675

Q. It was either 45 or 50? A. Yes.

MR. KIRLIN: When was this that you ascertained the rates?

THE WITNESS: On September 6, I think that was the date that I said I got to Rio.

Q. What, if anything, did you do personally with these shippers for the purpose of getting a cargo back to New Orleans for the shippers? A. None of them had made engagements. I went to see them personally in order to see what the difficulty was, there being such a marked difference in the rates and that they all said—— 676

MR. KIRLIN: We object to what the shippers said to Mr. Lowry as not the best evidence, as incompetent and immaterial.

A. They stated——

MR. KIRLIN: Wait a minute——

677 Q. Now, state what was said to you by Mr. Johnson of Hard & Rand?

MR. KIRLIN: We object to that; that is hearsay evidence. Do you take hearsay evidence on that? It does not seem to me the statement of what the shippers said could by any possibility be competent.

MR. BALDWIN: Mr. Kirlin, you have your right to make an application to strike it out.

MR. KIRLIN: How about that, Mr. Examiner?

THE EXAMINER: I have no authority to pass upon
678 objections of that kind, however I might be disposed to do so.

MR. KIRLIN: We appeal to you to present a certificate to the Court as to whether the Government is entitled to prove the hearsay statement of shippers as to their reasons for not shipping by Mr. Lowry's line.

MR. BALDWIN: I submit that he has not got any authority under the rules in equity to do anything of the kind. He is here to hear the evidence. I
679 have never known in my experience of equity cases that he could arbitrarily certify, without the consent of both sides. I insist on the answer being made.

THE EXAMINER: It has been done repeatedly, if there is any direction from counsel not to answer.

MR. BALDWIN: They can say their own witnesses shall not answer, but they cannot say the Government witnesses should not answer.

MR. SPOONER: We would not object to saying our own witnesses should not answer.

680 MR. BALDWIN: Let us understand it very thoroughly. We don't want to have any unnecessary trouble about it. If we should subpoena a hostile witness, say, some persons connected with your defendant lines, we can direct him not to answer.

MR. SPOONER: If you put him on as your witness.

THE EXAMINER: The manner of certification of records to the court, and usually in my experience, has always been on Cross-Examination where a witness has been instructed not to answer a question, or has refused of his own motion to answer. I think that Mr. Baldwin is right in his contention that he

should be permitted to express upon the record such 681
testimony as the witness can give, subject to the motion on the part of the defendants to strike out for any legal reason.

MR. SPOONER: Then, brother, the way you can protect yourself against such testimony, is whether you call the witness, the party who calls the witness ought to have the right to be protected against testimony utterly incompetent, while the party against whom the witness is called is entirely helpless to keep such stuff out of the record. 682

MR. BALDWIN: I might answer that; there is no such discrimination, you have got your remedy. It is either competent or not. When the evidence is all in, if you think it is incompetent, make your application to the Court.

MR. SPOONER: I know that. We can wait and I suppose argue a thousand objections on the record when this case comes to hearing. That is an utterly impracticable thing.

MR. BALDWIN: On the contrary, it is better than 693
to stop the proceeding each time.

MR. KIRLIN: That is, of course, in a measure true, but does it apply to anything that is palpably hearsay, such as this testimony that the witness is about to give, relative to the discrimination of people who are not agents of any of the defendants, and have no connection with the Government, but merely persons who should give the testimony covered by that themselves.

MR. BALDWIN: We have agreements and notices 684
under which various shippers are entitled to rebates, providing they confine their shipments entirely to these conference lines, and other lines which we will show are in association with these conferees, and I think that I can show that that is the general situation; and that I have the right to show that a general condition exists and has existed in Rio, so that no person can get any cargoes back, and the reason is that the fact that these rebates would be lost.

MR. KIRLIN: Shippers might very well also be disinclined to trust their coffee to a new and untried line.

685 MR. BALDWIN: Is not that a question of cross-examination, Mr. Kirlin?

MR. KIRLIN: Well, there is no use to argue it out at length. It is understood it is taken over our protest, and we reserve all our rights.

THE WITNESS: They stated that notwithstanding any service we could give them or guarantee, that it would be impossible to ship, on account of agreements they had with the conference lines, in regard to rebates which they would lose if they shipped
686 outside these lines.

MR. KIRLIN: I move to strike that out on the ground stated in our objections.

By Mr. Baldwin:

Q. You say, "they." What did Mr. Johnston say? A. Mr. Johnson said that as far as his own firm was concerned they were perfectly satisfied with the service that existed, and that their rebates amounted to such a large sum that it would be impossible for them to switch, without losing. And also that they had European shipments which were
687 practically as large as the United States shipments, and they would lose European rebates also if they deviated their shipments to the United States from the conference lines.

MR. KIRLIN: I move to strike out that statement on the same ground.

Q. Now, have you in mind any one or the other particular shippers that you have mentioned that made any particular statement?
688

MR. KIRLIN: It is understood that this is subject to our objections.

MR. BALDWIN: And also subject to motion to strike out.

A. Practically every shipper stated the same thing, with the exception of Castro, Silva & Company, and they were also afraid that their shipments would be refused entirely in event of their deviating, in addition to losing their rebates.

Q. You say "refused"; do you mean by that if they gave you a commitment on this ship that the conference lines

would refuse to take freight? A. Yes, as in the case of 689
Arbuckle.

MR. KIRLIN: I move to strike out the statement in regard to Arbuckle as hearsay and incompetent.

Q. You say you talked to Arbuckle? A. Yes.
Q. And what did he say?

MR. SPOONER: He is dead, we cannot call him.

A. I talked to Arbuckle's man there, Mr. Gray. They 690
were not making any shipments to New Orleans, and therefore they could not give us any freight.
Q. How long did you stay in Rio? A. Twenty odd days.
Q. And were you able to procure any cargo back to New Orleans? A. No.
Q. Came back in what way? A. Light.
Q. Ballast? A. Water ballast.
Q. That is the only effort that you made since that time at Rio with reference to cargo; or Santos? A. That was the last effort that I made personally, yes.
Q. In other words, since you were unable to pro- 691
cure a return cargo, no other shipment has gone either from Gulf ports or New Orleans to any of those Brazilian ports, for the purpose of carrying a cargo from New Orleans, because you could not get a return cargo? A. They have carried cargo from New Orleans, but finding they could get no return cargo, the service was suspended.
Q. This Line you spoke of was the Pan-American Mail —their service has been discontinued, is that the idea? A. Yes, sir.
Q. At the present time can you state whether or not 692
there has been any transportation facilities from New Orleans or Gulf ports, any of the Gulf ports to Brazil? A. There is a service from Mobile which went into effect after the discontinuance of the Pan-American Mail.
Q. How late was that? A. I am not sure, but it was somewheres between October 23rd, and December 31st.
Q. Do you know what the service consists of? A. The Munson Line, running steamers from Brazil.
Q. Then this Mobile line that you have spoken of does not go to Brazil? A. No; it goes to Argentina.
Q. Did you make any public effort of any kind to obtain cargo by advertisement or otherwise? A. We adver-

693 tised in the papers, the Jornal de Comercio of Rio, and some others. I am not sure which.

Q. Did you publish your proposed rates? A. The rates I do not think were published. The agent went around personally and quoted these various shippers.

Q. What was the capacity of this ship that you went down with? A. 8,300 tons dead weight.

Q. Did you have a full cargo down or near a full cargo? A. Full cargo including bunkers.

Q. Do you know whether or not this boat was offered
694 at Santos, too, for the shippers there? A. Yes, I know she was offered at Santos, by cable.

Q. Did you not personally go to Santos? A. No, I telegraphed from Buenos Aires to our agent to offer at Santos.

CROSS-EXAMINATION by Mr. Kirlin:

Q. Mr. Lowry, have you had any experience in the operation of steamships? A. Yes, since 1904.

Q. In the operation of steamships? A. Yes, sir.

Q. What was it? A. I was a time charterer.

695 Q. For what purpose did you time charter vessels? A. To transport lumber which I had sold in the United States from the Gulf.

Q. You chartered vessels to transport full cargoes? A. Yes, sir.

Q. How long had you been doing that prior to 1912? A. 1906 and '07, during the time that I also ran steamers from the Gulf to England and the Continent.

Q. Also carried bulk cargoes? A. I carried parcel lots of lumber principally.

Q. Under what name? A. William Lowry.

696 Q. You have never engaged in the general steamship business; that is, handling general cargo, prior to this? A. No, except that I put some of these boats on the berth in the Argentine for Santos.

Q. That is, on their homeward trip? A. Yes.

Q. Did you run any of the ships back from Brazil to New Orleans? A. No.

Q. What did your voyage consist of? A. Usually from the Gulf ports to the River Plate, then from the River Plate with grain to the U. K.

Q. All time chartered boats? A. Yes, sir.

Q. You had never engaged in any business homeward

from Brazil to the Gulf? A. No—indirectly I had charge 697
of other people's vessels, engaged in the business in 1904 and 1905.

Q. Whose ships? A. Camp & Hinton Company.

Q. Where were their headquarters? A. Lumberton, Mississippi.

Q. What was their business? A. Lumber merchants; selling lumber and getting any cargo for their vessels there back to the United States or the U. K. and Continent.

Q. You acting as their agent on the River Plate? A. Yes, and also handling their Brazil business.

Q. What was their Brazil business? A. Offered one 698
vessel on berth at Rio and got no cargo, and took the cargo for Arbuckles to New York here. That was in 1905.

Q. Did you offer any others in Brazil that did not get cargoes homeward? A. I had too much sense.

Q. Had you sufficient knowledge of the freight homeward to know whether the lines always got cargoes homeward? A. Yes.

Q. Do they? A. Usually they do.

Q. How large a proportion of them would you say got cargoes homeward from Brazil? A. Those that are on 699
the berth.

Q. What are put on the berths? A. Those that can get cargo.

MR. BALDWIN: Will you ask him what he means "on the berth"?

THE WITNESS: That are offered for tonnage to sail between certain dates, practically.

Q. Have you ever, except on the single occasion you 700
spoke of, been in Brazil yourself, when vessels were loading? A. Yes, sir.

Q. For what length of time? A. I was there in 1906 for a week, and for a week in 1907.

Q. That would be a relatively small period for you to form much judgment? A. There are certain facts that don't need a very long time to see.

Q. Do you mean to say that the vessels of these conference lines that you have spoken of generally have return cargoes from Brazil to New York? A. When they are offered for cargoes, they generally have cargoes.

Q. Are they not always offered? A. No.

701 Q. Can you think of any good reason why they would come empty? A. Because they could be used advantageously in other ports.

Q. I am speaking of vessels that come to New York from Brazil, after taking the cargo there? A. In regard to that I could not state positively, because I could not state which vessels take cargoes in Brazil only and those that call at Brazil on their way back from the Argentine to New York.

Q. You know in a general way, that there is not enough coffee coming home to supply coffee for the vessels that
702 regularly trade there? A. As they simply suit the vessels to the trade and not the trade to the vessels they always can get cargoes homeward.

Q. I am talking about Brazil, vessels that trade to the Brazils regularly. Do you say that there is sufficient coffee moving from there to supply them with cargo homeward? A. No, sir.

Q. Do you mean to convey the impression that those that do go on the berths homeward get full cargoes? A. I do not.

703 Q. What impression do you mean to convey in regard to that? A. Because they get a paying cargo back.

Q. Is it a paying cargo or not? A. From my knowledge, I should say they do.

Q. Whether they pay or not depends upon the amount they get, does it not? A. Yes, usually.

Q. What do you mean by usually? A. The cargoes going to New Orleans will range from 30,000 to 87,000 bags.

Q. What would be the total number of bags in a full cargo? A. Of a vessel carrying 87,000 I should think she was loaded very nearly to capacity. It depends on the ves-
704 sel which varies on all the lines.

Q. Does the coffee move regularly in even volumes throughout the year? A. No, sir.

Q. During what seasons does it move? Without refering to a memorandum, I could not tell you certainly. It all depends—it begins in August, and moves on to April.

Q. During the rest of the year does it move at all? A. It moves but in smaller volumes.

Q. Who was the head of this company in New Orleans? A. J. W. Porch.

By Mr. Baldwin: 705

Q. What company is that?

MR. KIRLIN: Pan-American Mail.

MR. KIRLIN: What other business was he in?

THE WITNESS: He was agent of Lukens Iron & Steel Company.

Q. Had he ever had experience in the steamship business? A. Yes.

Q. What experience had he? A. He organized the Philadelphia & Gulf, and he had some experience previous to 706 that running a line between Philadelphia and Mexico.

Q. Philadelphia & Gulf Steamship Company also got into trouble, didn't it? A. Yes, sir.

Q. What happened to the other line which operated some time before? A. I don't know anything about that—that is hearsay.

Q. It stopped running before the Pan-American was started? A. Yes.

Q. What was the capital of the company, Pan-American Company? A. I could not state that. I was not familiar 707 with the financial details.

Q. I suppose you have some general opinion about it?

MR. SPOONER: That would not make any difference, it would clearly be hearsay.

THE WITNESS: Their capital is supposed to be $3,000,000.

MR. BALDWIN: I object to the supposition. That is not material here at all.

MR. KIRLIN: How much was paid up?

THE WITNESS: I could not state that. 708

MR. KIRLIN: Have you ever heard that their capital was about $30,000?

THE WITNESS: I have heard so.

MR. BALDWIN: I object to that as immaterial and incompetent.

MR. KIRLIN: With that $30,000 they began to charter steamers to go into this trade?

THE WITNESS: Yes.

MR. BALDWIN: I object to that as incompetent and immaterial.

709 Q. What was the name of the boat? A. *Inkum.*

Q. Did you have charge of the loading of that ship? A. I did.

Q. How much did she carry? A. Her dead weight was 8300 tons.

Q. What kind of cargo? A. Agricultural implements, machinery, rails.

Q. Did you carry about a thousand tons of agricultural implements? A. The entire cargo carried was about 10,000 tons measurement.

710 Q. How much weight? A. I would not like to put that in under forty cubic feet to the ton, because I don't know how it goes. I don't think it amounted to 10,000 measurement, but there was about 60 carloads.

Q. That was consigned for what port? A. The Argentines and Buenos Aires.

Q. Where were the 2800 tons of rails going and lubricating oil? A. Rio.

Q. Which was discharged first? A. The Buenos Aires.

Q. You went to Rio on the downward voyage? A. No, on
711 the upward voyage.

Q. You said you did not go to the River Plate, as I understand it? A. I said I did. I said I went to Rio via the River Plate.

Q. I understood you to say, Mr. Lowry, that you know the ship had been offered to shippers in the River Plate? A. No, at Santos.

Q. You carried the rails, which were destined to Rio all the way down to Santos and back to Rio? A. All the way down to Buenos Aires, and back to Rio.

712 Q. How far is Buenos Aires beyond Rio? A. Six day's sail; 1135 miles.

Q. Was there any other cargo brought back from the River Plate? A. Yes, about three or four thousand tons of wheat, three or four of wheat and hay.

Q. That was destined for Rio? A. Yes.

Q. And discharged there? A. Yes.

Q. Then you took out the rails and then came home in ballast? A. Yes, sir.

Q. You left New Orleans, as I understand you, about the first of July? A. Yes.

Q. When did you arrive in the River Plate? A. The last

of July, or the first of August. I think we were entered on 713
the 2nd of August.

Q. How long were you in the River Plate? A. Until the 1st of September.

Q. How much was your charter rate on that ship per day?

MR. BALDWIN: I object to that as immaterial.

A. 2700 pounds a month.

MR. KIRLIN: You paid for all fuel and all other expenses, except the wages and provisions? 714

THE WITNESS: According to the usual custom.

Q. How long did you lay in Rio when you arrived there? A. About 20 days, if I remember right.

Q. When did the ship go back to New Orleans? A. October 23rd.

Q. Was she chartered for only one round trip? A. No, she was chartered for six months.

Q. Was her charter up then? A. No.

Q. What was done with her after that? A. She was re- 715
turned to her owners on the arrangement made.

Q. That is, you surrendered the charter? A. Surrendered the charter.

Q. How much short was she of the expiration of her term? A. Two months.

Q. Was she withdrawn by her owners, or did your surrender her? A. She was surrendered.

Q. And you made some arrangement with regard to the charge for the hire? A. That I don't know.

Q. It was an unexpired term? 716

MR. BALDWIN: He has already testified that she was returned on some arrangement.

A. The condition was that the rate had gone up from six and six pence to thirteen and six pence and the owner was glad to get her back.

Q. Was your rate six and nine pence? A. Something like that; I have not figured it out.

Q. Has the rate been as high ever as 13/6 for the round trip?

717 MR. BALDWIN: I object to that as immaterial and irrelevant.

A. I could not state that.

Q. I gather from what you now say that these merchandise rates for steamers have gone up? A. From the time this vessel was chartered to the time she was surrendered it went from six to fourteen for direct sailings to the U. K. Continent.

Q. Fourteen shillings on what? A. Dead weight ton.

718 Q. That the ship would carry? A. Yes.

Q. And your charter had been six shillings? A. Something like that.

Q. Is not the rate different for a six month's charter or was not it at that time from what it is for a single trip?

MR. BALDWIN: I object to that as immaterial and irrelevant.

A. It varies; depending upon the voyage, the boat, condition of the boat, facilities of the boat, time that she is

719 taken. I should say not one feature, thirty or forty features would have to be considered.

Q. Has not it been your experience in time chartering that you always get a lower rate for a six month's term than you do for the trip contract? A. Yes.

Q. Have you kept any track of the conditions since September, up to December, 1912? A. No, not after I came back.

Q. Do you know whether it has remained high during that interval?

720 MR. BALDWIN: I object to that as immaterial.

A. As a matter of general knowledge I could not state, no.

Q. Would you say that the advance from six shillings and nine pence to thirteen or fourteen for dead weight per ton in American value of tonnage would afford any justification for raising the rate a little per bag on coffee at that time? A. Not for people who don't charter vessels.

Q. Anybody who has a vessel can charter it, cannot he? A. Vessels are built for certain trades, and a vessel which might be very valuable in one trade could not be chartered advantageously in another.

Q. Do you know anything about the Brazil vessels? A. No. 721

Q. You don't know whether they could be good for any other trade or only that trade? A. No.

Q. Do you know whether any other vessels operating down there would or would not be suitable for any other trade than Brazil? A. I can give you my opinion that the Lamport & Holt vessels could not be used in any other trade.

Q. What is that based on? A. Because they were built especially for this trade. They would not do at all for 722 bulky cargoes; there are too many stanchions and between decks.

Q. You are speaking of passenger conditions? A. No, I am speaking of holds. I know nothing about passengers.

Q. Do you think that the only trade in which the Lamport & Holt vessels operate is from here to Brazil, or from here to the River Plate and back?

MR. BALDWIN: I object to what he thinks.

A. It is not. 723

Q. What do you know about it as to how they trade? A. I only know by my knowledge that they run backwards and forwards to the River Plate in addition to this trade.

Q. From where? A. From various ports; for instance, when they ran the Hamburg South American out of the Gulf, they ran from Hamburg.

Q. Then they were suitable for other trades? A. Yes if they could afford to carry for ten shillings a ton, they were suitable for it.

Q. What other ships did the Pan-American Line send 724 out of New Orleans? A. The *Corruna* and the *Asama.*

Q. Were you in New Orleans when they were discharged? A. No, sir.

Q. Were you in their ports of distribution when they arrived? A. No, sir.

Q. And in fact know nothing except hearsay? A. Nothing whatsoever.

Q. Do you know what ports they went to? A. I know they went to Buenos Aires; I know they touched at Rio and went from Rio to Buenos Aires.

Q. Did your relations with the Pan-American Company cease upon the return of the *Inkum?* A. Automatically.

725 Q. You did return with her to New Orleans? A. Yes, sir.

Q. What became of those vessels after they got down to the River Plate, the last two? A. I could not say.

Q. Did they ever come back? A. I have no knowledge on that point.

Q. Do you know whether the company chartered any other vessels that they were not able to discharge at all? A. I have heard that they chartered another vessel.

Q. Is that the company that failed?

726 MR. BALDWIN: I object to that as immaterial and irrelevant.

Q. And left those vessels down there in Brazil?

MR. BALDWIN: I object to that.

A. That is what I heard.

MR. BALDWIN: I ask to have stricken out what he heard.

727 Q. What were the names of the other two ships that were actually discharged? A. The *Corruna* and the *Asama*.

Q. What nationality were those two ships? A. British.

Q. Were they chartered on time charters also? A. I never saw their charters; I presume they were.

Q. Were there any other cargoes moving from the coffee ports in Brazil northward except coffee? A. Very little.

Q. Did you try for anything else besides coffee? A. I did—I tried for manganese ore.

728 Q. Does that move in any considerable quantities north? A. Full cargo lots, but only when the trade calls for it; trade and market conditions.

Q. Where does that move to? A. Philadelphia.

Q. That would not be very much assistance to a line desiring to trade by New Orleans.

MR. BALDWIN: I object to that as speculative.

THE WITNESS: I simply investigated the conditions. I could not decide whether we could take that or not.

Q. Did you find anything else moving from Brazil north-

Q. Have these ships ever been engaged in the coffee 729
trade as far as you know? A. They have never been on charter by any of the lines, no, sir.

Q. Had they ever been engaged in the coffee trade? A. No, sir.

Q. Had you ever been engaged in the coffee trade? A. No, sir, except to let vessels in carrying coffee. I did that for Arbuckle.

Q. You mean sub-charter for full cargoes? A. Yes.

Q. But the actual handling of shipments of cargoes from Brazil to New York, you have never previously given any 730
personal attention? A. No.

Q. So far as you know, none of those vessels or their masters, had given any attention to the handling of coffee cargoes from Brazil northward? A. I could not state that.

Q. So far as you know? A. I don't think they were, because they had never been chartered by these lines.

Q. Now, the *Lloyd Brazileiro* to which reference was made this morning, was running at this time, was it not? A. Yes, sir.

Q. Do you know whether that is a subsided line or not? 731

Mr. Baldwin: I object to that as incompetent and immaterial and irrelevant.

The Witness: I don't know.

By Mr. Kirlin:

Q. You said you offered to carry coffee home for thirty cents? A. Yes, sir.

Q. And you stated in your testimony at Washington as I have it here before me that at that time the conference rate home was forty cents? A. I was not quite sure 732
whether it was forty or forty-five or fifty. I could not be sure.

By Mr. Baldwin:

Q. What is your recollection now? A. My recollection is that it was forty-five.

By Mr. Kirlin:

Q. According to the report of your testimony on page 96 you also said, I am quoting, you said that the coffee rates as they existed on steamship lines, "I think it is

733 worth forty or fifty cents a bag to bring coffee to the United States." A. I do; I would like to carry it.

Q. You say it was worth it? A. Yes.

Q. You were offering at that rate to get business? A. I was offering at a rate on which we could get this cargo.

Q. You were offering for less than it was worth? A. A great many people offer to do things for less than they are worth to get the business.

Q. Did you think that a person might not be able to offer a regular and stable service; that that might also be the
734 reason why they would not want to ship coffee?

MR. BALDWIN: I object to that as speculative.

THE WITNESS: I did not say less than it cost. I said less than it was worth.

Q. Yes—you would not say that a shipper might not consider his business for a whole year, rather than for a single day? A. Naturally.

MR. BALDWIN: I make the same objection, as incompetent, immaterial and irrelevant, and specula-
735 tive.

By Mr. Kirlin:

Q. You think he might consider that? A. Yes.

Q. What guarantee did you suggest to the shipper as to permanency of their service? A. It rested with them. If they gave us the coffee, they guaranteed the permanency.

Q. That would depend also upon how well you managed your business, wouldn't it? A. Of course.

Q. How did you come to get in touch with the Govern-
736 ment in this matter?

MR. BALDWIN: I object to that as immaterial and irrelevant.

THE WITNESS: I was requested to come here when in Washington. I was requested by Mr. Alexander to go before the committee at Washington.

Q. I am talking about here? A. Mr. Montgomery here after hearing my testimony there, asked me to come up to testify.

Q. You came up voluntarily? A. No, by request.

Q. Are you under subpoena? A. No, I am not subpoenaed, no.

RE-DIRECT EXAMINATION by Mr. Baldwin: 737

Q. When you use the expression that it was worth forty cents in your testimony before the Congressional Committee, you did not mean worth that in the sense that it was the cost of doing the business?

MR. KIRLIN: Forty or fifty cents.

Q. Or fifty cents. You considered it worth that to carry it; was that the idea?

MR. KIRLIN: I object to that as leading. 738

MR. BALDWIN: I have the right on my re-direct.

THE WITNESS: I think that it is worth that to anybody, for the reason that, as has been brought out in this previous question, there is not enough coffee to go around.

Q. When you offered the rate of thirty cents down there, did that include from dock to dock? A. Yes.

Q. And you figured that at that rate, there was a profit in it for your company? A. Yes. 739

Q. And that particular charter; is that right? A. Yes, sir.

Q. Now, is there anything particularly difficult in the storing and the transportation of coffee on these steamers? A. No.

Q. That would require any particular experience in the matter? A. Not experience, care.

Q. It is very largely a question of loading? A. Entirely a question of loading.

Q. As a matter of fact in these coffee ports the stevedores who do that business, are more or less specialists in that, are they not? A. They are. 740

Q. And they would store as well on one steamer as another, regardless of who the master was? A. Exactly.

Q. You say that you understood that the Pan-American Mail had sent two other vessels south; when did they go? A. I could not say; approximately a month apart.

Q. Before or after the boat that you went on? A. Afterwards.

Q. Is it mere hearsay as to what finally became of them? A. Entirely.

741 Q. And the reason why they were abandoned? A. Hearsay.

Q. Also was it not the reason because they could not get return cargoes? A. That was the reason that was alleged.

Q. And due to the fact that these conference agreements prohibited the shippers from sending on any other steamer, because it would lose their rebates?

MR. SPOONER: I object to the question as leading and as improper in form, and calling for a conclusion.

742 THE WITNESS: Yes.

Q. You knew from your experience that the principal commodity that was shipped from Rio and Santos, and Victoria, known as the coffee ports, was coffee? A. Yes, sir.

Q. And naturally, when you went there you looked for coffee shipments? A. I did.

Q. You did not expect to get cargoes of any other description? A. Nothing else moving except manganese.

743 Q. I understood you to say that this manganese that you brought from the River Plate? A. I did not bring up any.

Q. What was it that you brought up from the River Plate? A. Hay and grain.

Q. Why was it that this particular vessel went to the Argentine first? A. On account of it being necessary to store rails in the bottom of the ship.

Q. And therefore it became a question of going to the port where you would discharge the lighter cargo first? A. Yes.

744 Q. That which was superimposed on the rails? A. That was it.

Q. Did you, while you were at Rio, make an effort to see all of the known coffee shippers there, who were shipping to the United States ports? A. I did, as given to me by our regular agent.

Q. Now, if a shipper at New Orleans or any of the Gulf ports who wished to ship a cargo of any commodity, or to make a shipment of any commodity to any of the Brazilian ports, what route would have to be taken to do so; how would they do it and where? A. They would have to make a charter; if they had enough cargo they might make

a charter, or else they would have to ship it by rail or sea 745
to New York.

Q. In other words, in the absence of any other regular line from New Orleans to the Brazilian port, unless you get a stray charter, you would have to send them to New York? A. Yes.

Q. And that obtains up to the present time? A. It obtains at the present time.

MR. KIRLIN: No, you have a line from Mobile.

THE WITNESS: He is asking as to Rio.

746

Q. Mr. Lowry, you have no personal knowledge, have you, as to what the capital stock of this Pan-American Mail Steamship Company was? A. No, sir.

Q. Or how much paid up capital there was? A. No, sir.

Q. Do you know whether or not the Lamport & Holt Line and the Prince Line, and the Hamburg South American Line, go to any other ports in South America besides these Brazilian ports? A. I presume they do, but I could not state exactly their itinerary.

Q. Don't you know, as a matter of fact, that outward 747
vessels to the River Plate, stop at Rio on the way back; is not that so? A. Very often, yes.

Q. And is not that their usual itinerary? A. With their freight vessels, yes.

Q. Do you know whether or not when they arrived at Rio they did have cargoes or part cargoes to the United States ports for the United States voyage? A. They usually have part cargoes, yes.

Q. I wish you would explain a little more definitely what you said in answer to a question by Mr. Kirlin about these 748
vessels being offered on the berth? A. A boat may be laid on the berth, or let on a charter to carry a full cargo of one commodity. They offer the vessels, state what the cargo is to be, and between what ports.

Q. You know, do you not, that the vessels of these conference lines carry their—carry other commodities than coffee? A. Yes.

Q. And when they arrive at Rio they frequently have a cargo of another nature? A. Yes.

Q. And then whether they are offered there depends upon how much space each vessel has left for coffee on the

749 return, does it not? A. Yes, it depends altogether on the character of the cargo.

Q. And on the amount, does it not? A. Yes, sir.

Q. Now, you were in Rio some four weeks in 1906? A. No, I was there not quite ten days in 1906.

Q. Mr. Kirlin asked you a question about your being able to ascertain shipping conditions in Rio in 1906; were you able to ascertain from your general knowledge of the shipping conditions that did obtain within that ten days? A. Yes.

750 Q. No particular difficulty about it to anybody who knew how to ascertain it? A. None at all.

Q. You could do it just as well in ten days as ten weeks, couldn't you? A. Yes, sir.

MR. KIRLIN: You did not understand my question, I think. My question was just a suggestion; by remaining there ten days or two weeks, he would have hardly sufficient opportunity to see whether the ships coming home every day in the year would have or would not have full cargoes of coffee.

751 MR. BALDWIN: You asked him the general question of whether or not he could ascertain in the limited time he was in Rio, what the conditions were as to whether they could get full cargoes or not.

MR. KIRLIN: Whether he did not get them.

A. I did not say full cargoes.

MR. KIRLIN: It was all right except the word "usually".

THE WITNESS: Well, they never ran light boats

752 to New Orleans.

MR. KIRLIN: Oh, yes, often.

Q. I understand that this vessel that you went down on, you say it was chartered for six months, is that right? A. Yes.

Q. And the charter consideration was by the month, was it not? A. Payable by the month, in advance.

Q. And a fixed sum? A. Yes, a fixed sum.

Q. And when it was finally turned over to its owners, sometime in October, 1912, it was due to the fact that you were unable to get the cargoes? A. Yes.

Q. The *Inkum* was a suitable vessel, was it not, for the

transportation of a cargo of coffee? A. She was a suit- 753
able vessel.

Q. How did it compare in size with the vessels of the Brazilian, for instance? A. In size, it is, I think about as large—it is larger than some and smaller than some.

Q. Freight vessels that plied—— A. Yes.

Q. Arbuckle down there, are large shippers of coffee? A. Very large.

Q. Did you get an offer from them at all? A. No, they don't ship to New Orleans.

Q. Did they make an offer to you to ship to New York? 754
A. I was in treaty with them in regard to shipping to New York, but as I stated, any question of that kind, I was not competent to pass upon. I had no jurisdiction over that.

Q. Did any of the shippers that you talked with—that you offered a favorable rate of thirty cents a bag, make any statement to you as to the capacity of the ship, or its seaworthiness or its adaptability? A. I never entered into the question that far.

Q. As a matter of fact you know she was adapted for the purpose, is that so? A. I know she was adapted, yes, 755
sir.

RE-CROSS EXAMINATION by Mr. Kirlin:

Q. Now, Mr. Lowry, you stated that you could have made a profit if you got thirty cents—how much coffee would you have needed? A. It is a question of mathematics. I can only give you that very generally. (Witness makes certain computations.) Sixty-four thousand bags or over.

Q. How much time would you allow in making that computation, for the loading of that coffee, carrying it to New 756
Orleans, and discharging? A. The actual time that we took to go to New Orleans, and that time up, plus the time which our stevedores told us we could put it in at Rio.

Q. What did you give as the usual rate of loading? A. I don't remember exactly at the time. I had it at that time.

Q. You must have some period of time in your mind, in order to make a computation? A. As I said, I was giving myself a leeway of about twelve hundred dollars on the proposition, which would amount to about three days there. I should say we could put in about 70,000 bags a day, if they would give it to us as fast as we could load it.

757 Q. I suppose they don't give any such despatch as that? A. You spoke of possibilities.

Q. I am not talking about possibilities, but what would actually happen? A. Well, from one to four days; that would be only fifteen thousand bags a day.

Q. According to your information is it customary to get despatch even as high a rate as that per day? A. From ten to fifteen. If we give a rate of thirty cents we would expect to get despatch.

Q. You were giving that with conditions attached to it?
758 A. No, those were discussed on every shipment, as we naturally received not from one shipper, but from several shippers we expected to get despatch. That is a question that is up to the people handling the boat.

Q. How much coal did you count in that computation? A. For what purpose?

Q. Steaming home? A. The same amount as we used to come there.

Q. And you were counting the time at New Orleans as how much for discharge and delivering the coffee? A.
759 We figured from five to six days. It can be put off in a day, as a matter of fact.

Q. Did you make any computation of the expense of loading down there? A. Yes.

Q. What did you take that at? A. Ten cents a bag to cover everything.

Q. Wharfage and all port charges? A. Yes.

Q. And what for discharging? A. Two and one-half cents a bag.

Q. To cover everything? A. Yes.

Q. If you had got 67,000 bags of coffee homeward, would
760 that have given you a profit on the round voyage? A. Yes.

Q. Can you tell us now what the other freights were or would have been, besides the coffee, so that we can check up the calculation? A. No, I could not tell you that because I am not quite clear in my mind what they were. I remembered at the time I made these figures.

Q. Can you tell us what rates you took for rails and agricultural machinery and lumber? A. We had approximately a $60,000 freight down there. We had a ten or twelve thousand dollar freight from Buenos Aires to Rio. Those are questions that I prefer not to answer now, but I

could go into the calculations, and give you the actual manifest of the boat. 761

Q. What was the length of your run from Rio to New Orleans of the *Inkum?* A. I think it was seventeen days, if I remember right.

Q. Did you take your coal for the entire voyage when you left New Orleans? A. No.

Q. When did you coal for homeward? A. We took some coal at Rio; not very much, enough to take us to St. Lucia with what we had left from the New Orleans end; I don't remember exactly the amount of coal. 762

Q. Can you give us roughly the cost of coal from Rio? A. The contract that I made there was 36 shillings per ton.

Q. And how many tons approximately did you take? A. I don't remember exactly; I think something like two hundred.

Q. How much at St. Lucia? A. As much as was necessary to take us to New Orleans. Those are things which I have not kept in my mind, and I can only tell you approximately. About two hundred tons more there, I think.

Q. Did you tell me how much your price was from St. Lucia? A. Twenty-one or twenty-two shillings. 763

By Mr. Baldwin:

Q. You mean at that time? A. Those were all on contracts.

Q. Can you give me roughly the port charges in New Orleans outward, including stevedoring? A. No, I cannot.

Q. Or can you give them at Buenos Aires or Rio or both? A. At Buenos Aires they are a little intricate. I don't think there is anyone who can give the charges off hand. 764

Q. What I want to know is what this ship costs? A. I can give you the result of the voyage of the ship. To answer these questions off hand, which involves calculations which are rather intricate, I prefer not doing it. I could not do it.

Q. Can you tell us the actual results of the voyage? A. I can.

Q. Can you do that? A. I will.

MR. KIRLIN: Send it to Mr. Baldwin.

765 RE-RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. The primary object of this Pan-American Mail as I understand it, was to furnish facilities from New Orleans to the Brazilian ports in South America; is that right? A. Yes.

Q. Because of the fact that there was no regular line of steamers for outward bound shipping, is that right? A. That was the reason.

Q. And in forming the company, and starting in business, and chartering this vessel, it was to facilitate this outbound
766 shipping from those ports? A. Yes.

Q. And upon expectation that you could get return cargoes, so that business could be conducted at a profit? A. That was the idea in starting the line, yes, sir.

Q. And when you made the rate of thirty cents for coffee at Rio and the other coffee ports you had in mind the prices that you had on the outward voyage, which, if you had gotten the full cargo returning, the result of the inward cargo added to the outward cargo, you expected to yield you a profit, is that right? A. Yes.

767 Q. In other words you did not run the ship down there for the sole purpose of entering into the coffee trade? A. Not at all.

Q. The main purpose was to furnish the shippers along the lower Mississippi Valley with these facilities? A. With an outlet, yes, sir.

Q. And having, of course, in mind that it should not be done at a loss? A. Yes, sir.

Q. And to maintain these facilities so that they could run and give these shippers these facilities? A. Yes.

768 Q. As a matter of fact all of the incoming vessels of this conference at New Orleans always brought in the coffee at fixed rates? A. Yes.

Q. You have already testified on your direct examination, as I recollect, that the Hamburg South-American Line at one time ran its vessels to New Orleans and then withdrew them leaving the Prince Line? A. That is what I understand.

RE-RE-CROSS-EXAMINATION by Mr. Kirlin:

Q. How much of a cargo of the character carried by the *Inkum* originated in New Orleans or the lower Mississippi

Valley? A. I could not state, but all of it could be moved 769
to New Orleans at the cheaper freight rate than it could get to New York.

Q. Why did you take less than New York rates on the cargo? A. I did not make the rates, so I could not tell you.

Q. Who did make them? A. A man who is now traffic manager for the Southern Express Company, R. G. Cobb. I did not know what the New York rates were.

Q. The principal part of the cargo consisted of agricultural implements and rails? A. Yes.

Q. Where did the agricultural implements originate? A. 770
Illinois.

Q. And where did the rails originate? A. Birmingham, Alabama.

Q. Is it not a fact that most of the cargo that originates along the Gulf coast and in the lower Mississippi Valley is cargo which can be and usually is, shipped in bulk cargoes under charters? A. No, sir, very little.

Q. Is not the principal export along the Gulf coast lumber to Brazil? A. Which is grown on the Gulf coast, yes, but what moves in a larger volume than anything else 771
would be hard wood, lumber which is always handled by parcel shipments; carload lots.

Q. How many staves go to Brazil in a year? A. They go to the Argentine, not Brazil.

By Mr. Baldwin:

Q. The object of this company was not simply to ship merchandise to Brazil, but to the South American ports? A. Yes.

Q. Have you any idea how much profit there was in that 772
charter for the owners of the *Inkum?* A. I should say about twenty-five or thirty per cent.; as all owners were making over—were making from thirty to forty per cent. it was not anything remarkable.

Q. Do you think it was a feasible, commercial proposition, to expect that you could operate a steamship service dependent on chartered vessels, which, according to those rates were paying from thirty to forty per cent.? A. I do, as long as there is a free market, without rebate.

By Mr. Kirlin:

Q. In other words, stand two profits? A. Absolutely, at

773 the rates which are made via New York, by the conference lines, it would stand two profits.

Q. Have not the rates the conference lines have offered been rates which were lower than the American rates for tonnage? A. Only on such things as are handled by syndicates, such as the Standard Oil Company, the United States Steel Products Company, and things of that kind, which move in large bulk.

Q. The bulk of the commodities determines the charge? A. The weight, but not the bulk.

774 Q. I mean the mass that pays freight? A. The value of the freight paid to the lines on the general cargo would pay much more than the bulk cargo, as far as revenue is concerned.

By Mr. Baldwin:

Q. Mr. Lowry, I ask for an expression of opinion; assuming that there had been free competition in the coffee ports between these companies so that a rate less than the fixed rate, forty or forty-five per cent. was available to the shipper, and assuming that the coffee is sold in the Ameri-
775 can markets, having in mind the cost of transportation, the result would be that in selling it to the American consumer, they would get the better rate, and therefore it would cost less to them? A. Yes.

MR. KIRLIN: I object to that as calling for an opinion.

Hearing adjourned to Thursday, January 30th, 1913, at two o'clock P. M.

776 NEW YORK, January 30th, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES: Same as at last hearing.

JAMES H. WADDELL recalled (previously sworn at page 21).

DIRECT EXAMINATION by Mr. Baldwin:

MR. BALDWIN: Now, Mr. Waddell——

MR. KIRLIN: Before we get to that, has Mr. Lowry got that statement he was to get? A. No, I have not got it.

Q. You understand what it is I want? A. Yes. 777

Q. I want the figures which will enable us to form some idea as to what the ships made out of port charges, coal, fuel, and all that sort of thing and how much more you think she would have made if they got 65,000 bags of coffee from Brazil, showing the time you put into that particular branch.

MR. BALDWIN: Mr. Waddell, in your testimony yesterday or the day before yesterday, you gave the rebates which Hard and Rand had received from these lines from the Rio and Victoria, but not what 778 they received from ships at Santos. Will you tell us what the rebates were from the different lines for each year from Santos?

MR. KIRLIN: It is understood that all the evidence is subject to the same objection as that made in regard to the rates from Victoria.

MR. BALDWIN: Yes.

WITNESS: From Santos for the year ending 31st August, 1910, the Lamport Holt $8,786.43.

779

Q. For what year? A. 1910.

Q. I want it for each year. A. This is for August 31st, 1910.

Q. Why don't you give us for the year 1908? A. I gave 1910 to 1912. Prince Line, $4,284.34.

Q. How much? A. Prince Line, $4,284.34; Hamburg South American Line, $315.85 for the year ending August 31st.

Q. You only give two lines there. A. No, three.

Q. What is the total? A. The total is $13,386.62.

780

WITNESS: Lamport Holt Line, $8,105.06; Prince Line, $3,171.28. That is for the year ending 31st August, 1912.

Q. What is the total? A. The total is $11,276.34.

Q. No Hamburg in that? A. No. Lamport Holt, $6,830.79; Prince Line, $3,377.92.

Q. What is the total? A. The total is $10,208.71.

Q. No Hamburg South American line or Hamburg American line in either of those years? A. No.

Q. You were asked yesterday to produce the figures showing the amount of rebates that Lamport Holt, I mean

781 Hard and Rand received from these people from the coffee ports to Europe. A. I have not been able to get those figures out yet. I have told Mr. Montgomery that they were rather complicated and that it would take time.

Q. Were there not any rebates paid from the coffee ports to Hard and Rand for the year ended 1909? A. Yes, there were rebates.

Q. Have you got them?

MR. KIRLIN: What's this?

MR. BALDWIN: You said there were none for 1909.

782

A. No, I said 1907/8.

Q. 1909 is what I am asking for. A. I have that year here. I did not give it the other day because I did not know them. I have them now from Santos, but not from Rio because they are under another agreement.

Q. Give the figures there from Santos from each of the lines.

MR. KIRLIN: From 1908.

783 WITNESS: Year ending August 31st, 1909. From Santos, Lamport Holt $7,998.90. Prince Line $1,744.76. Hamburg South-American $479.96. Nothing for the Hamburg-American Line.

MR. KIRLIN: I want to ask you if there were any for the years 1907 and 1908.

MR. BALDWIN: Were there any rebates for the year ending August 31st, 1908? A. Yes.

Q. Have you got them? A. No, I have not got them. I
784 was not asked for them.

Q. Will you get those figures and the figures with reference to the European rebates, so that we can have them at an adjourned meeting? A. What is it you want?

Q. Rio for the year 1908 and 1909. A. Yes.

Q. And also from all the coffee ports for the year ending August 31st, 1908, or whenever the year ends. A. That is another year back.

Q. Yes. It will be practically from August 31st, 1907 to August 31st, 1908.

MR. KIRLIN: All the rebates that you get for that year. That will apply to those importations made to

the United States ports as well as those which you shipped to the European ports. 785

MR. BALDWIN: In the payment of rebates by these conference lines to Hard & Rand, were the payments based upon the figures finally furnished by Hard & Rand or figures that are sent by the Hard & Rand Agents in the coffee ports or London? A. They are made on the basis of the figures sent to London by Hard & Rand in Brazil.

Q. Not from any book-keeping you have here? A. No.

Q. This checking you speak of is simply for the purposes of adjustment. A. Yes. If there is any mistake. 786

Q. All rebates then that are paid to Hard & Rand in London by any of the conference lines are subsequently sent to Hard & Rand's Home Office here? A. No, they are not sent on here. The money is kept on the other side.

Q. Subsequently it is accounted for here? A. Yes, with this office.

MR. BALDWIN: There are a couple of items that he has not been able to get, but I think it would be just as well if you go on with your cross-examination and get that done. 787

CROSS-EXAMINATION by Mr. Kirlin:

MR. KIRLIN: Very well. How long did you say you have been connected with the New York Office? A. Altogether over twenty years.

Q. I believe you said that you had been resident in Brazil? A. During those years, yes.

Q. While you were in Brazil, what branch house were you connected with? A. I was connected with Santos and Rio. 788

Q. Both? A. Both, yes.

Q. What you have stated to us in dealing with the branches of Hard & Rand in Brazil is based on your general knowledge of the business which you have from the position here and also from personal knowledge which you acquired there? A. Yes.

Q. Are you sufficiently acquainted with the affairs of the firm to be certain of the fact that the partners in the businesses of "Hard & Rand, New York," "Hard, Rand & Company, Brazil," and "Hard & Rand, London" are all the same people? A. I am. Yes, sir.

789 Q. Are we to take it that each member of the firm whose names you have given is a partner in all three firms? A. Yes, sir.

Q. It is a fact, however, that they are separate firms is it not? A. No, they are not separate firms.

Q. Is not Hard Rand & Company of Brazil, a separate organization? A. No.

Q. Don't they have to file their articles of co-partnership, and register themselves, as they are merchants of Brazil? A. They have to register themselves and they file articles
790 of co-partnership.

Q. Have you ever seen them? A. I have seen articles of co-partnership, but not the copies sent to them.

Q. You cannot say that the copies sent down there are the same? A. No, I cannot tell you.

Q. Mr. McCreary can tell us? A. Yes.

Q. Is the firm in London known as "Hard & Rand"? A. Yes.

Q. Does each firm keep its own books of account separately from the books of account of the other houses? A.
791 They keep separate books of account but all accounts are directed to Hard & Rand, New York.

Q. A summary of accounts of each of the various houses comes to the New York House? A. Yes.

Q. But the Brazil House has its own capital, does its own banking, and pays its own staff? A. Yes.

Q. It is only the total profit and loss that has to be dealt with in any way by New York? A. Yes.

Q. The same as to the other houses? A. Yes.

Q. Does the Brazil House exercise entire and unre-
792 strained discretion in making the contracts for the transportation of coffee from Brazil to the United States—that is, if you know? A. I do not know "unrestrained." It is left in the general charge of the department there.

Q. They do not consult the New York house? A. No. They do not fix any rate.

Q. When they are determining whether they will or will not ship on any line, the rate that line is charging they do not consult with New York? A. I think it would depend on circumstances, but as a general thing they do not do it because there is no necessity for it.

Q. May I have the three exhibits 118, 119, 120, the rebate

circulars and supplementary ones? A. I call your attention to Petitioner's Exhibit No. 120, purporting to be an unsigned contract dated some time ago in 1909 between the firm of Hard and Rand and the companies running lines therein mentioned. Was that contract signed? A. I believe it was. I only know it from seeing it as an agreement here. 793

Q. It was sent to you as a copy of a contract that was signed down there? A. Yes, as I understand it.

Q, You had not been consulted about that contract before it was signed? A. No, sir. 794

Q. I should judge, from the provisions of paragraph one of that contract, that it must have been signed prior to September, 1909. Look at it and see if that inference on my part is correct or not? A. That appears to be so.

Q. That contract apparently covered not only shipments to the United States, but also shipments to certain ports in Europe? A. Yes.

Q. And among the lines signatories to the agreement there are some which do not trade to New York at all from Brazil? A. Yes. 795

Q. Among them the Royal Mail Steam Packet, and the Nordeutscher Lloyd that at that time had no lines from Brazil direct to New York? A. None, as far as I know.

Q. And haven't now? A. No.

Q. There are also among the parties who signed that contract certain lines which did not trade between Brazil and the United Kingdom or the Continent? A. Yes, there are two lines as far as I know—the Lamport Holt and the Prince Line.

Q. You had no line? A. No. We did not ship to the United Kingdom or Continent. 796

MR. BALDWIN: I presume he is speaking entirely from general knowledge. I do not want to jump in here——

MR. KIRLIN: That's all right. He knows all about it.

Q. Do you know that you do not now ship and did not at the time covered by this agreement, make shipments from Brazil to the United Kingdom by the Lamport Holt or Prince Line, and that you did not make shipments and do not at the present time ship from Brazil to this country by

797 vessels of the Royal Mail Steam Packet Company or the Norddeutscher Lloyd? A. We do not.

Q. So that while this contract covers all branches of trade—speaking in a broad way—when you came to make up your claims for rebates, each port made up separate claims for—in respect of—shipments made on the lines trading from that port, or from that port via other ports in Brazil to the United States or Continent, and separate claims for rebates on shipments from that port, or from that port via other ports in Brazil to ports in this country?

798 A. I understand you to mean that each port in Brazil where we are shipping from made up a separate claim for each line.

Q. Yes. A. That is so—yes.

Q. Made up a separate claim? A. Yes—made up a separate claim against each line for each trade—whether to United States or Europe.

Q. What do you mean by "each trade"? A. On the Hamburg-American line they had trade from Brazil to United Kingdom and Brazil to New York.

Q. United Kingdom? A. From the Continent, yes.

799 Q. Don't you make up a separate claim for rebates on shipments made by the Hamburg-American Line from Brazil to the Continent, and a total separate claim for shipments made on the Hamburg-American line from Brazilian ports to New York? A. Yes.

Q. And each is independent of the other? A. Yes.

Q. Do you know whether there was a contract similar to Petitioner's Exhibit No. 120 signed for the year beginning September 1st, 1909, and corresponding to August 31st, 1910 for the year immediately preceding the year covered

800 by Exhibit 120? A. Would you mind repeating the question? The stenographer read the question.

WITNESS: That is, the year 1909.

MR. KIRLIN: I mean it should be 1909.

MR. BALDWIN: I object to that on the ground that if there was another contract and it was in writing it would be the best evidence, and this witness's testimony is only hearsay.

MR. KIRLIN: We have been talking hearsay and we might as well talk a little more.

MR. BALDWIN: If you are going to take a chance I guess I can afford to.

WITNESS: I believe the contract prior to this 801
would cover a full year. I think it was dated June 30th to August, 1909.

Q. With that correction, there was a similar contract in force for the preceding year? A. Excluding, I believe, shipments to Europe—otherwise similar.

MR. KIRLIN: Without prejudice to our objection about the rebate circulars I purpose asking a few questions about those. This notice, Petitioner's Exhibit 118, dated 15th July, 1908, being entitled 802
"A Notice to the Shippers from Santos" was a public notice issued by the lines and delivered to the trade in Brazil.

MR. BALDWIN: Just a moment. The Government does not acquiese in the statement made by Mr. Kirlin with reference to the entry that he has just placed on the minutes.

MR. KIRLIN: That is only to show my objection.

MR. BALDWIN: Precisely, but I do not want to sit here quietly—I do not want to be in the position of 803
standing quietly by and having thought that we acquiesed in your statement.

A. It was distributed to the shippers at Santos.

Q. Was this contract number 120 signed in Rio or Santos? A. 118.

Q. Yes, 118—No, No. 120. A. If this one, 120, was signed at all, it was signed in Rio.

Q. Was the Exhibit 118 entitled "Notice to Shippers from Santos" distributed by the lines amongst shippers in New York, so far as you know? A. So far as I know, I 804
believe, no. That is, any copies we had were sent from Brazil to us here.

MR. BALDWIN: I object to that question as involving a conclusion. He simply expresses his belief.

MR. KIRLIN: (To witness.) As far as your knowledge went—that is what you meant to say? A. Yes.

Q. As far as your knowledge goes, did your firm in New York receive a copy of Exhibits 118 and 119 or 120 or what are those other two supplementary ones?

805 MR. MONTGOMERY: I do not know the numbers, I think I have one of them.

MR. KIRLIN: We put in two typewritten ones.

MR. MONTGOMERY: That is the Supplementary Notice to Shippers.

MR. KIRLIN: Mr. Stenographer, read the question.

(The question was read over.)

MR. KIRLIN: Now, add to it "Or the two supplementary ones, Exhibits numbers 123 and 124."

806 (To the witness): The two that were shown to you. A. Yes. We received them.

Q. Directly from the lines at Brazil? A. No, at New York.

Q. You received them in New York from your Brazil houses? A. We did—yes.

Q. When you have spoken of claims for rebates being made by Hard and Rand of Brazil, or their Branch houses in separate coffee ports, have you referred to the form which appears on the second page of the Exhibits 118, 119 and 120, and on the back pages of the two supplementary
807 notices, Exhibits 123 and 124? A. So far as I know they were all made up in compliance with this form attached to these exhibits.

Q. At any time since December 3rd—no—February 14, 1908 has the firm of Hard and Rand of New York—that is, the New York House—made out any claim for rebate on coffee shipped from Brazil to New York——

MR. BALDWIN: I object to that on the grounds——

MR. KIRLIN: On these forms attached to these exhibits?

808 MR. BALDWIN: I object to that as immaterial because it was made out by your house in Brazil—would be an act of the New York house and therefore immaterial.

WITNESS: I believe not, but I cannot tell. I cannot say definitely without looking up the records.

Q. You have no knowledge of it? A. No.

Q. The universal practice has been that those claims have been made up in Brazil and presented in London or Hamburg? A. Yes.

Q. And they have been paid in London with the exception you mentioned? A. Yes, except Busk & Daniels. 809

Q. You mentioned two or three instances in which Busk and Daniels made payment to you, and your New York house did not present any claim for payment to the house of Busk & Daniels? A. No.

Q. These items which were made here in New York were in pursuance of claims made in Brazil and presented to the Home Office in London? A. Yes.

Q. Which was a mere banking transaction? A. Yes.

MR. BALDWIN: I object to that. Let him state what it was. 810

Q. That is all it amounted to. The Home Office instructed them to do it. A. I understand it was more convenient for the London house to pay them.

Q. It was not on any application to your London Office? A. No.

Q. Purely on instructions from your London house? A. Yes.

Q. It is your understanding, is it not, that these rebates were paid by the lines upon the basis of a contract between your firm in South America and the lines embodying substantially the terms shown in this contract—Petitioner's Exhibit 120? 811

MR. BALDWIN: I object to that. If paid under a contract made——

MR. KIRLIN: In South America.

MR. BALDWIN: They are one firm, and as such it is immaterial.

MR. KIRLIN: He can testify, and we can argue that out afterwards. 812

WITNESS: They were.

MR. BALDWIN: What is that?

WITNESS: They were.

Q. It was part of the contract that the lines would supply sufficient tonnage to maintain such service as was reasonably required to carry the coffee? A. Yes.

MR. BALDWIN: Wait a moment. I object to that on the grounds that it speaks for itself.

813 Q. And in return for that you were to give the ships all your shipments? A. Yes, those were the terms.

MR. BALDWIN: I make the same objections that the contract covers that.

Q. And it was also understood that if the lines failed to supply adequate tonnage you were at liberty to go outside of certain conditions? A. According to the contract, yes.

MR. BALDWIN: Same objection.

814 Q. That contract was based on valid considerations?

MR. BALDWIN: I object to that—incompetent and immaterial. The contract speaks for itself.

WITNESS: We thought so.

MR. BALDWIN: I will ask to have stricken out what he thinks about it.

Q. Have the lines ever failed from 1908 up to the present time to provide adequate tonnage at reasonably regular
815 intervals for the transportation of such coffee as Hard & Rand was to ship from Brazil to New York?

MR. BALDWIN: I object to that.

WITNESS: No.

Q. Have they supplied reasonably adequate and regular service through the period mentioned?

MR. BALDWIN: I object to that as immaterial.

WITNESS: They have.

816 Q. Have they supplied an efficient service?

MR. BALDWIN: I object—same objection.

WITNESS: No. Satisfactory in every way.

THE EXAMINER: Do I understand the question and answer right? I understand you to say "Did they supply an efficient service" and the witness said "No," and then said "Satisfactory in every way."

WITNESS: "An efficient and satisfactory service" I think I said.

Q. Did they supply an efficient service? A. Yes, an efficient service.

817 THE EXAMINER: The answer was contradictory in itself "No. Satisfactory." (To the Stenographer.) You had better strike out the "No" in the answer he made.

Q. In your opinion, have the rates that have been charged from 1908 up to the present time been reasonable rates, having regard to the general rates for tonnage?

MR. BALDWIN: I object to that as not pertinent to the direct examination, that no foundation has ever been laid to qualify him to express an opinion on the 818 subject, and that it is incompetent and immaterial.

WITNESS: I do not think I am in a position to answer that.

Q. Does coffee move with regularity from Brazil to New York—that is, at all periods throughout the year? A. No. It varies considerably according to conditions.

Q. According to what conditions does it vary? A. It is heavier after the beginning of the crop. When the crop begins to come in in any considerable quantities the ship- 819 ments are heavier.

Q. When is that? A. The shipments of the new crop would not commence much before July 1st.

Q. During what period are the heavier shipments made? A. I should say from July up to the end of the year.

Q. To what extent are shipments made from the end of the year up till the next ensuing crop comes up? A. I could not say what the percentage would be in proportion.

Q. Cannot you give us a farish idea of the relative amounts? A. Not without looking up particulars. 820

Q. Is there a very great deal of difference? A. Yes, there is.

Q. It is important for the coffee shippers to know that they are going to have a regular service to take care of their needs during the period when the heavier shipments are being made, and also to continue during the remainder of the period to take such shipments as may offer?

MR. BALDWIN: I object to that on the grounds that not knowing what is in the minds of anybody else than himself he cannot testify to. He may possibly

821 state what he considers, but I object to that as incompetent and immaterial.

MR. KIRLIN: I think he knows enough about it to tell us something about it.

WITNESS: It is necessary for us to have a regular tonnage to suit us.

MR. KIRLIN: Then it is necessary for every shipper to know——

MR. BALDWIN: I object to that. He cannot state what is necessary to another man's needs.

822

Q. You know generally the particular conditions in regard to the transportation of coffee between Brazil and this country? A. In general, yes.

Q. How does the coffee come in from the interior to Rio and Santos? A. By rail.

Q. Did you say "Victoria" too? A. Yes, Victoria comes in by rail and by water.

Q. Is it commercial usage to make a transhipment direct from the cars or to store it in warehouses awaiting convenient opportunities for shipment?

823

MR. BALDWIN: If he knows.

WITNESS: I should say it is not the ordinary custom to ship direct from the cars.

Q. Tell us what the practice is.

MR. BALDWIN: Do you know the practice?

WITNESS: I have been down there—yes. In Santos only a small part of the coffee is shipped direct from the cars. Some of it has to be put into

824 stores and then shipped from the stores into ships at Santos. Rio the same. Victoria none of the coffee is shipped directly from the cars.

Q. Are there storage charges incident to the handling and shipment? A. Warehouse charges?

Q. Yes, warehouse charges? A. Yes, actual warehouse charges are made, or there is the expense incurred by the owners of the warehouse in storing the coffee.

Q. If vessels are not prepared to take these shipments with relative frequency, would the warehouse expenses be increased? A. Yes, they would.

Q. Is it to the interest of the shippers, therefore, to have a fairly frequent as well as a regular service? 825

MR. BALDWIN: I object; that is argumentative.

WITNESS: It is, yes.

Q. Is it an advantage for shippers, therefore, to be able to ship inter-changeably on the ships of a number of lines such as the various lines we have been speaking of rather than to have to hold their coffee for shipment on a single line? 826

MR. BALDWIN: Wait a moment—wait a moment.

MR. KIRLIN: Operating less frequently——

MR. BALDWIN: Will you please wait a moment. I object to that as calling for a conclusion and having no proper basis laid down for him to express an opinion, and also that it is not pertinent to his direct examination.

WITNESS: The more ships we have the more convenient it is for our business.

Q. And the more economical also? A. Yes. 827

Q. Hard & Rand—are they coffee growers? A. No.

Q. You buy your coffee from a firm of growers in the interior—a certain number of bags at a time? A. We buy in various ways. Some direct from the growers—some from agents and some directly at the shipping ports.

Q. Is the business done that way by the other shippers also? A. Yes, it is.

Q. Of course where they purchase in the interior and bring it down to the ports by rail or otherwise, it is to their interest economically to get it shipped as quickly as possible from that point? A. Yes. 828

MR. BALDWIN: That is, of course, subject to objection.

Q. You buy at a certain market current on the day of purchase? A. We have to buy at the current prices, with our competitors.

Q. You buy on the most favorable market, or try to? A. Yes, we do.

Q. It is to your interests to get the cargo forward to its final destination as quickly as possible? A. It is.

829 Q. You buy on the market current at the time of purchase? A. Yes.

Q. And if you have to store it waiting for a ship the expense of these storage charges enhances the cost price of the shipment to that extent? A. Yes, if we have to pay storage.

Q. Therefore it is to your interests to get it forward as quickly as possible, so that the net cost prices will be the least possible—or the lowest possible? A. That is our business to do that.

830 Q. Under those circumstances can you say what the attitude of the shippers in South America would ordinarily be towards such an enterprise as that which Mr. Lowry described to us yesterday—or the day before—in your hearing?

MR. BALDWIN: I object on the grounds that he was not here and there is no evidence to show that he ever made any inquiry as to what other shippers thought or what their views were about this or any other enterprise. It is clearly incompetent and im-
831 material from any standpoint.

WITNESS: I do not feel that I am qualified to answer that.

Q. Can you say whether shippers would naturally be more inclined to ship their coffee by ships that were accustomed to handle it rather than by ships which had had no previous experience?

MR. BALDWIN: I object to that because it involves what other people think in reference to such a propo-
832 sition. It is incompetent and immaterial.

WITNESS: We would prefer shipping by ships which are in the habit of handling coffee and know how to handle it.

Q. Do Hard & Rand export coffee from the United States to any other country? A. Some shipments are made from New York.

Q. To what places? A. At times to Europe.

Q. West Indies? A. We have shipped to the West Indies.

Q. To any other countries? A. We have shipped to the East Indies.

Q. What about Africa? A. Not from New York that I know of. 833

Q. Are such shipments made from the bulk of the coffee imported from Brazil? A. Some of it.

Q. And the rest from where? A. There are various coffees shipped to Europe from New York.

Q. Do you export Brazil coffee? A. Yes, in small quantities, I think, only.

Q. Is it treated in any way—mixed or ground? A. No—shipped as it is received.

Q. Now, there is a market for coffee in this country also, is there not? A. There is, yes. 834

Q. And in a general way, are sales here controlled by the market? A. They are, yes.

Q. You have to sell at the market whether your expense of importation is a little more or a little less, as the case may be, do you not? A. We do not have to sell at any special price at all. We sell in competition with other importers.

Q. At rates which are fixed by competition in the market? A. Yes, if we wish to sell—on prices fixed by competition. 835

Q. In other words, you cannot sit down and figure out how much your coffee is costing you landed at New York, and how much profit you want, add them together and then go up and sell your coffee for the total of those amounts? A. No. We wish we could.

Q. You have to sell on the market? A. We have to, yes.

Q. So that if your charges are a little more under existing conditions than they might be under other conditions that is your loss and not the loss of the public, is it not? A. That is a question that would take some argument to decide. 836

MR. BALDWIN: It is just as well you do not have to sell on the market.

Q. If you sold on the market that would be so. A. In that case it would have an effect on the market.

Q. It would if all were similarly situated? A. Yes, I think that question is too involved for me to give a direct answer.

Q. Is coffee imported in considerable quantities from

837 countries other than Brazil? A. Yes, but not in anything like such considerable quantities as from Brazil.

Q. From what other countries, practically, is coffee imported? A. Maracaibo, Mexico, some Central American and the East Indies. That is about all, I think.

Q. Hayti? A. Very little.

Q. Can you tell approximately what the proportion of these imports is to the imports from Brazil? A. The proportion—I do not know, but it is very small proportion, probably not more than one-quarter.

838 Q. You spoke of an offer having been made to you by the agent of the Lloyd Brazileiro at a less rate than in 1912? I want you to tell us what that line is? A. I understand——

MR. BALDWIN: I object if he does not know. He cannot tell us what he believes it to be. You were not asking him specially a question—only what he believes about it.

MR. KIRLIN: I want to find out something about the line.

839 MR. BALDWIN: I submit the witness should confine himself to what he actually knows. He was not asked upon direct anything he did not know.

WITNESS: Substantially——

MR. BALDWIN: I will have to have this stricken out. The witness cannot possibly know of his own knowledge.

Q. Does it operate a regular service? A. More or less regular.

840 Q. How frequently does it send ships? A. That I do not know—how frequently.

Q. How frequently as compared with the combined services of the conference lines? A. Very frequently as compared with the conference lines.

Q. What class of vessels?

MR. BALDWIN: I ask to have that stricken out because he does not explain or define.

Q. What class of vessels does it operate as compared with the vessels operated by the conference lines?

MR. BALDWIN: I object to that—asking for an opinion.

A. The conference lines run a much superior class of 841
vessels to the Lloyd Brazileiro.

MR. KIRLIN: I think that is all.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Waddell, you say that the conference line operates superior boats to the Lloyd Brazileiro line. Do you mean to say that you know of your own knowledge that all of the boats of these conference lines are superior to any of the boats of the Lloyd Brazileiro? A. No. I speak 842
only in a general way of the service.

Q. As a matter of fact don't you mean that only the boats belonging to the Lamport & Holt line are superior to the boats of the Lloyd Brazileiro? A. No. There are the Prince Line boats too. I should say all of them.

WITNESS: There are so many of them I do not know.

Q. You are only giving a sort of a general knowledge? A. On general knowledge of the actual situation but not of 843
any particular boats.

Q. You have a general knowledge of the boats and of the situation? A. Yes.

Q. Of the lines of the Lloyd Brazileiro? A. Yes.

Q. Have you ever personally examined the boats of the Lloyd Brazileiro or do you know whether they are inferior to all or any of the boats of these conference lines? A. No. Personally I have not gone over all of the boats. I have gone over some of them.

Q. Don't you know as a matter of fact that some of the Prince Line boats are older and inferior to other boats in 844
the line? A. Yes. Some boats are inferior to them.

Q. Keeping to those operating in this service, don't you know that some of the boats of the Lloyd Brazileiro are larger and newer than some of the Prince Line? A. Some are very large and new.

Q. And also larger and newer than some of the boats in the Lamport & Holt? A. Only size and newness in the boats is not anything.

Q. You were asked a general question, Mr. Waddell, as to the superiority of the boats running in connection with the coffee trade? A. That was the way I was judging them.

845 Q. In so far as the boats themselves are concerned, in what respect are the boats of this conference superior for the purpose of carrying coffee to those of the Lloyd Brazileiro, particularly the new boats of the Lloyd Brazileiro? A. We believe——

Q. I am asking you a question—in what respects are they superior—not what you said about the general conditions, but for the purpose of carrying coffee? A. That is what I started in to tell you.

Q. Well? A. For the reason I should say that cargoes
846 by the conference lines are better handled than those of the Lloyd Brazileiro Lines.

Q. You say better handled. You mean to say in the stowing of the cargo? A. Yes, in the discharging and in the general handling.

Q. But for the purpose of carrying coffee there is no superiority? A. If it is in the ship I should say not so long as it is sea-worthy.

Q. Well then you limit your opinion about the superiority of these boats not to the safety, capacity and sea-
847 worthiness but to the way that the cargo is handled before it is stowed and the way it is handled when it is delivered. Is that the idea? A. That is the idea.

Q. Then boat for boat there is no superiority as far as the carrying is concerned? A. As far as the boats themselves are concerned I do not know.

Q. You do not attempt to give any impression here that as far as the navigation of that boat, and making time, relative to its power and its size, but what it is just as good a boat as any of the conference boats for carrying cargo? A.
848 As far as the boat itself goes, as far as I know, they are.

Q. Then you eliminate from the description you have given of its superiority the question of the boat itself? A. Yes, I will. I do not think the boat itself has any bearing on it.

MR. KIRLIN: You are speaking of the superiority of the service generally.

MR. BALDWIN: He did not testify to that.

Q. I suppose the insurance rate is no more. There is no advantage in any insurance rate you can get. A. I do not know what the rates are.

Q. Practically the same on all the boats? A. On all the 849
"A.1" boats they are.

Q. Boat for boat? A. I should say the rates would be about the same.

Q. Now, have you any knowledge at all about the facilities that the Lloyd Brazileiro has for the loading of coffee on its ships at its coffee ports? A. You mean in the way of putting the cargo on board.

Q. Yes. A. I do not think I have ever seen the Lloyd Brazileiro boats loading.

Q. You do not mean to include in "superiority" the fa- 850
cilities with which they actually stow the cargo? A. I mean in this way——

Q. Answer my question.

MR. KIRLIN: He is entitled to answer the question in his own way. You should not interrupt him.

MR. BALDWIN: When I am putting a question I am entitled to an answer if I can get it, and if I cannot get it he should say he cannot give it straightway. (To Witness.) Do you understand the question? A. I cannot give a direct answer to that question, I 851
think.

Q. Now, Mr. Waddell, in answer to Mr. Kirlin's question in a general way you stated that the boats of the conference were superior? A. Yes.

Q. To the boats of the Lloyd Brazileiro? A. Yes.

Q. Well, now, I want to——

WITNESS: "Service," you said.

MR. KIRLIN: "Boats," he said.

MR. BALDWIN: Boats—— 852

MR. KIRLIN: That is not what you asked.

WITNESS: I am trying to explain to you and you will not let me do it. If you will let me do it——

MR. BALDWIN: I will let you do it. Just answer and say what you mean to say.

WITNESS: I think probably in stowing the cargo has something to do with it.

Q. If you have no personal knowledge of the facilities of the Lloyd Brazileiro at its coffee ports to stow coffee cargo, in what sense then would you say that the boats of this

853 conference have any superior facilities for that purpose. A. We believe——

Q. I ask you to answer that question. The question is simple and should be answered cleanly and fairly as I have put it. If you have no personal knowledge of the facilities of the Lloyd Brazileiro at its coffee ports to stow the coffee, in what sense do you say that the conference boats have superior facilities for such a service? A. In the general out-turn of the cargo here.

Q. When it arrives here? A. Yes.

854 Q. Now, in what instance have you yourself, as a member of the firm of Hard & Rand imported coffee from the coffee ports in Brazil by the Lloyd Brazileiro since 1908? A. Not since 1908.

Q. Not since 1908? A. No.

Q. Have you made it a part of your enquiry to notice how the Lloyd Brazileiro delivered their coffee here? A. Not since that time.

Q. Then how is it you determine the superiority of the conference loading over the way the Lloyd Brazileiro de-

855 livered coffee here? A. I did not say the loading. I said the general handling. We have had shipments come in by the Lloyd Brazileiro Line.

Q. Since 1908? A. No, before that.

Q. Whatever opinion you have about the Lloyd Brazileiro is based upon experience that you had prior to 1908. Is that right? A. Yes, that is right.

Q. As a matter of fact you have not any knowledge at all about the relative facilities of these respective lines at the present time in the handling of coffee? A. Personally, no.

856 Q. I understand that you (that is, Hard & Rand) have not varied this, or employed the Lloyd Brazileiro for the importation of any kind of merchandise at all since that time. A. No.

Q. With reference to the coffee market, are you prepared to say, Mr. Waddell, that the importation of coffee from other ports than Brazil would equal one-quarter of the total coffee imported into this country? A. No. I only gave that as a rough estimate.

Q. As a matter of fact isn't it very much less than that? A. Yes, I think it is less than that.

Q. Then the proportion of coffee imported from other ports than Brazil being so small, the Brazil coffee practi-

cally establishes the market here. It is based upon Brazil coffee? A. I should say the supply and demand, that is, the supply of Brazil coffee has more to do with the price than anything else. 857

Q. As far as the coffee imported from other ports than the Brazil ports, it is rather a specialized coffee. It is better in quality or otherwise—somewhat in a class by itself? A. It is a better quality than Brazil coffee.

Q. When it is offered for sale it is offered because of its own quality and characteristics, isn't that so? A. In general, yes. 858

Q. Who are the other large importers of coffee besides Hard & Rand here? A. Crossman & Sielcken, Arbuckle Brothers and there are some big importers in the West, the Thompson, Taylor Supply Company, and so on.

Q. But the three first are the biggest? A. Yes.

Q. In New Orleans? A. Crossman, Aarons, Israel.

Q. Isn't Israel an importer here? A. Yes.

Q. A large importer? A. Yes, quite a large importer.

Q. With the exception of Arbuckle is it a fact that all these importers confine their importations entirely to this conference line? A. That I do not know. 859

Q. You know that Sielcken does? A. No, I do not think that he does.

Q. You don't know about any of that? A. No.

Q. You don't know of any importers of coffee here that bring in their coffee by the conference line that pay any different rate than you do from the same ports? A. No.

Q. From the same ports? A. No.

Q. As a matter of fact you understand that every person who ships over those lines pays the same rate? A. I understand that they have to. 860

Q. And that they get the same rates according to the number of bags they ship? A. Yes, I should understand they would.

Q. That is your interpretation of the rates under these contracts? A. Yes.

MR. KIRLIN: That is dependant under their compliance with the terms? A. Yes.

MR. BALDWIN: That is, assuming that they confine all their shipments to these conference lines they get the same rates and rebates which you do? A.

861 I do not see why they should not. I should think they would.

Q. That is what you assume because they operate under this same agreement? A. Yes.

Q. With reference to the sale of coffee by Hard & Rand what proportion of the coffee that you import from Brazil ports, do you export to Europe—roughly? A. Such a very small proportion that it is not worth speaking of.

Q. How much to the West Indies and East Indies? A.
862 None, now, at all.

Q. How long is it since you have been exporting to the West and East Indies? A. It must be three years or more I should think.

Q. Then as a matter of fact, as you testified in your direct examination the coffee which Hard & Rand import into this country is meant for home consumption, and that is where you find your market? A. Yes.

Q. Regardless of what may be the market for coffee—strike that out and make the question—when you speak of
863 the market price for coffee what do you have in your mind —a market price established upon the Exchange here? A. I have in my mind the price at which I can go out and sell the coffee.

Q. And have no relation of the prices quoted on the coffee Exchange? A. Such a price would generally be in line with that quoted on the Exchange.

Q. The price on the Exchange relates to futures? A. The quotations of futures on the Exchange.

Q. That is in New York? A. Yes. I was going to say
864 spot coffee is quoted daily, as well as the price for futures.

Q. The spot price for coffee is not necessarily fixed on the Exchange? A. No.

Q. But the futures almost undoubtedly? A. According to the prices on the Exchange.

Q. And it sometimes happens that there is a difference between the spot price and the future price? A. Yes.

Q. When you seek to sell your coffee you look to a profit of course? A. Look to what?

Q. To a profit. A. We hope to make one.

Q. And you carry on your business on that basis? A. Yes.

Q. So if you should find that the average price or what you call the market price at a particular period was at such

a figure that you could not dispose of your coffee except 865
at a loss you would reserve your right not to sell? A. It would depend on conditions generally.

Q. You would not allow the conditions to sway you so that you would sell at a loss, would you? A. No, but we could not hold on indefinitely because we could only sell at a profit. It all depends on the prevailing price.

Q. When you come down to the selling price of coffee here you find, as a matter of practice and of general knowledge, that the importers of coffee having in view the market for futures find their own prices, that is to say, the 866
market price is at such a stage that they can sell at a profit. That is the average experience. A. I do not understand the question.

The question was read back by the stenographer.

Q. As a matter of fact in the coffee trade you all have a pretty general idea of about what you can get for coffee. Is that right? A. Yes.

Q. You find that out—how coffee is offered by other competitors here? A. Yes. We keep in touch with the market.

Q. The price of coffee always has some relation to the 867
above prices? A. Yes—some relation.

Q. As a matter of actual practice the market price is always or generally at least at such a price that there is a profit for the importer—is that right? A. As a general thing— yes.

Q. So that as a general thing the consumer who is to purchase from Hard & Rand or anybody else pays Hard & Rand the cost of the coffee, including the carrying charges you testified to the day before yesterday and Hard & Rand's possible profits? A. Yes. 868

Q. That would obtain with all your profits under like situations? A. Yes.

Q. So that in the last analysis if there was an agreement between the carriers by which the price was fixed to the importers—a uniform basis—then the consumer would have to pay that price in getting the coffee? A. I think that would depend.

Q. Of course, I am assuming the same conditions you have testified to a few moments ago. A. Yes. Under those conditions, yes, if they established a uniform price.

MR. KIRLIN: What price are you talking about?

869 A. The price of the coffee to the consumer, which, as testified, would include the cost price to the importer and the carrying charges.

MR. KIRLIN: Yes, but you asked him about the conference fixing the price.

MR. BALDWIN: I am assuming something.

MR. KIRLIN: How can the conference fix the price.

MR. BALDWIN: I will change my question and put it differently.

870 WITNESS: The other day you said I knew nothing of the details in fixing prices for coffee, so I do not think that I am qualified to answer your question.

MR. BALDWIN: You answered Mr. Kirlin's questions.

WITNESS: But you are getting down into such complications that it is out of my province altogether.

MR. BALDWIN: I am trying to make it as simple as I can, but if you cannot answer, say so.

871 Q. Assuming that the carrying price of coffee, established by the carriers is a part of the market price which the consumer must pay, and assuming that that is a uniform price—I mean that all the shippers would have to pay the same price, or the great bulk of them, if they use the conference lines, then the consumer would have to pay that carrying price in the last analysis? A. If all these things are as you said, yes.

Q. I am just assuming that. A. I should say yes.

MR. KIRLIN: Yes, wouldn't that be plain if the
872 conditions were as you said they were?

MR. BALDWIN: You started to ask him how it affects the consumer, and I think we will establish that before we get very far. (To witness.) You said in answer to a question of Mr. Kirlin that you would prefer to ship your coffee by firms that were accustomed to handling coffee—you remember that? A. I do not think it was put that way. Ships that were in the habit of carrying and knew how to handle a cargo.

Q. That is not what you told Mr. Kirlin. He asked you the question direct. He first asked you if shippers would

not prefer to work with firms that were accustomed to 873
shipping their lines? A. Yes, I answered yes to that.

Q. The Lloyd Brazileiro is accustomed to handling coffee is it not? A. Yes it is now.

Q. Has been for some time, hasn't it? A. The date——

Q. Answer the question—for some time? A. For some time, yes.

Q. Then if the Lloyd Brazileiro had offered Hard & Rand a rate which was less than they would have to pay to the conference line, and they were accustomed to ship coffee, it would not be by their lack of experience that you 874
would decline? A. It was for personal business reasons of our own.

Q. Answer my question. It would not be because they were not accustomed to handling coffee that you would not give it to them? Have you always found that the facilities offered by all of these conference lines have been satisfactory to Hard & Rand? A. Yes, the service has been satisfactory in all ways as far as I know.

Q. Never had any complaints at all? A. I believe you are speaking now since 1908.

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MR. KIRLIN: We are dealing with the year 1908.

MR. BALDWIN: I will ask the question.

MR. KIRLIN: I object—it is immaterial.

WITNESS: Yes, we had some objections before 1909, in 1908 and before that. There are always more or less small objections to be made at all times when the business handled is as large as it is.

MR. BALDWIN: What do you mean by small objections?

MR. KIRLIN: They left the cat in the hold.

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MR. BALDWIN: If it is the cat, let him say so.

WITNESS: There are various things in the handling of coffee we have cause to make complaints about.

Q. In 1908 didn't you have a serious complaint against the Lamport & Holt line because of the heavy loss that originated by reason of slackage and other troubles?

MR. KIRLIN: That was before the conference.

MR. MONTGOMERY: The conference began in January and February.

877 WITNESS: We did have a kick with them about the slackage.

Q. What is slackage? A. Bags that are not filled.

Q. You charged the fact that they were not filled up to the shipping company? A. All bags are supposed to be shipped weighing the same—same weight.

Q. What causes the slackage? A. Sometimes rough handling sometimes the chafing caused by shifting the cargo—sometimes robbery.

878 Q. Has it ceased entirely since 1908? A. I do not think we have had any complaints of any sort—not amounting to anything—no complaints about the slackage.

Q. Do you mean at the present time? A. Since 1908. I cannot remember back as far as that. I know we have had complaints about slackage.

Q. Also about the shrinkage caused by other conditions, have you not? A. Shrinkage—I do not know.

Q. Is the shrinkage caused by slackage? A. I do not know that shrinkage. I do know how it is used.

879 Q. A shrinkage of weight—that would be the weight of the bag. A. The shrinkage of weight must be the weight that the bag has lost.

MR. KIRLIN: The weight that is lost by slackage —is that what you mean?

WITNESS: I don't know in which way it is used. Real shrinkage is the loss in weight of the coffee itself.

MR. BALDWIN: In order to make it a little more clear I will call your attention to a letter of March, 1908—a copy of a letter sent by Hard & Rand addressed to Lamport & Holt. Have you seen that before? A. Yes.

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Q. Did you sign it? A. If it is signed by me, I must have signed it. (Examining Exhibit 111.) That is my signature. I must have signed it but I do not remember what it is about.

Q. Well, now, I will call your attention to certain statements in this letter: "With enclosed copies of letters and recent correspondence with Messrs. Busk & Jevons regarding poor out-turns of cargoes per steamers particularly as to slackage with consequent heavy loss in value on origin-

ally sound coffee converted into ships fillings and further 881
shrinkage of weight of the latter by elimination of dirt and rubbish, we now beg leave to remark for your serious consideration an adoption of means for an improvement of the service in this respect." Up to that time your firm had, or at least thought they had just ground for complaint to the firm of Lamport & Holt? A. Yes.

Q. Existing for some period of time? A. I do not know how many boats that covered.

Q. Does that refresh your recollection so that you can say whether that was an isolated circumstance or as it 882
would seem here, a general complaint? A. It was a general complaint.

Q. It says "heavy loss" here. A. I cannot tell how long a period that covers.

Q. It does refresh your recollection enough to know that there was a serious complaint? A. There was a complaint, yes.

Q. It says, further, "This seems to be a growing rather than a lessening evil as you will observe from the record of out-turns by several of your steamers recently and we can 883
discover nothing that leads us to believe in the existence of an earnest effort to abate the abuse." Doesn't that refresh your recollection to show that that must have been over a period of time to cover several steamers? A. I think it must have covered several boats.

MR. KIRLIN: What is the date of that letter?

MR. BALDWIN: March 13, 1908. (To witness.) Did you have some complaints against them about the way they loaded the coffee? A. I do not remember any.

884

Q. I will read another paragraph: "Greater precaution at ports of loading against damage to bagging while in slings during the transit hoisting and lowering and as at Santos in the case of handling by the stevedores laborers." A. I remember that point now.

Q. You remember it. If your attention had not been called to that you would apparently have said that the Lamport & Holt Line at least of these conference boats had any superior facilities or were any more careful in the handling of coffee than the Lloyd Brazileiro or any such line.

MR. KIRLIN: You will observe that my enquiry dated from the time of this conference agreement

885 MR. KIRLIN: Your letter is dated March 13, 1908, and you should ask on any line that I examined him about.

MR. BALDWIN: I differ with you on that. Do you object to it?

MR. KIRLIN: Yes. It is in cross-examination on the matter that I proved that. I did not mean to, and apart from that you have no right to. You may your own witness.

MR. BALDWIN: I am trying to refresh his memory.

886 Mr. Waddell, you have testified in answer to Mr. Kirlin's question about the superiority of these conference line boats over the boats of the Lloyd Brazileiro. Now this letter of March 13, 1908, seems to indicate that up to that time Hard & Rand complained about the way the cargo was stowed in Brazil and particularly in Santos. Is that right? A. Yes.

887 Q. Now, are you prepared to say that your attention having been called to this letter that any one of these conference lines boats, including the Lamport & Holt Line to Santos, have any superior facilities and loading, any better, safer and more careful, than the boats of the Lloyd Brazileiro? A. No, I am not.

Q. It says here, further—"As an instance of damage caused by rough handling at Santos we cite the case of an invoice of 241 bags of coffee arrived by the S. S. *Byron*, about 40 bags of which were discharged with the greater part of their contents missing." Have you any recollection of that? A. Yes.

888 Q. "The mouths of the bags having been torn alongside the seams, evidently from the impact of the drop from the laborers' shoulders into the steamer hold, no attempt at resewing these bags had been made, their sticky ends merely being gummed together, and wound about with a length of twine. To offset the loss in weight on this parcel alone about 1700 lbs. of ship fillings were required." It looks as if on that boat the *Byron*, the complaint was that not only had they not slung it right but it had been stowed in such a way that this damage was done. A. No coffee is stowed properly, as we think.

Q. By any line? A. By any line. 889

Q. It says here "Rat eaten bags. This damage we have noticed to an unusual extent on several occassions recently. On the *Tennyson.*" That is a Lamport & Holt boat? A. Yes.

Q. Was that an old or a new one in 1908? A. A reasonably new addition.

Q. You do not know any superiority in rat potential in the Lloyd Brazileiro over that boat? A. I do not know anything about that.

Q. "Carelessness in unloading, especially by contact with 890 hatch combings and cross beam brackets as bags are hoisted in slings from the hold. In this connection nothing has been done in line with our repeated agitation for an improvement consisting of the placing of vertical fenders of planking inside the hatchways so that contact with the projections may be averted. This method was followed by us when discharging our chartered boats with eminently satisfactory results." A. The construction of these boats in certain ways for the effective handling of coffee was wrong.

Q. What do you understand that to mean? A. Well, take 891 the slings they haul up with. We had trouble with one and all the boats. The slings were too small and we got them to use wider slings and the trouble was averted.

Q. What do you understand by "Repeated agitation for planking." Did that have to do with the slings in placing boarding down the hatchways? A. It is the regular custom in New York and we have fought against it.

Q. Have yon any knowledge whether the Lloyd Brazileiro had these difficulties? A. They unloaded the same way.

Q. Have you seen it done? A. No. 892

Q. Since 1908? A. No.

Q. Not since this letter? A. No.

Q. Now we come down to what appears to be the 5th point. "Unnecessary loss or sacrifice of contents of torn bags. There appearing to be a growing tendency in the hastening of a ship's discharging to hoist slings containing broken and torn bags without due regard to leakage." Your understanding is that you had a number of complaints against them for the careless manner in which they discharged your coffee? A. It was the regular method of discharge.

893 Q. You thought you had a just complaint? A. Yes, we wanted to remedy it.

MR. KIRLIN: Did you? A. Yes.

Q. You wanted to improve it because it was against Hard & Rand? A. Yes.

Q. It was a general situation with all those boats? A. Yes. It was the general way of unloading at New York.

Q. I am not speaking of New York,—the conference boats.

894 MR. KIRLIN: He says the general way.

MR. BALDWIN: Are you familiar with any other boats coming up from Brazil ports? A. I have never seen other unloading but I have never heard that they were shipped carefully.

Q. Outside the conference line other boats have been engaged to any great exte[nt] [u]nloading of coffee here since 1908? A. The[re] not over much.

Q. Would you say the u[sual] [t]hat is the usual
895 course of the conference li[ne] A. Yes, I say I have not seen the Lloyd Brazileiro b[oats] unloading.

Q. Do you mean that the usual course in this unloading is the usual course of the Lloyd Brazileiro line? A. From my personal knowledge, yes.

Q. Do you recognize this as a copy of a letter sent to Lamport & Holt? A. Yes, I remember it.

MR. KIRLIN: Is the letter in evidence?

MR. BALDWIN: The whole book is in evidence.

MR. KIRLIN: I object as incompetent and immaterial unless the answer is produced. I call for the
896 production of an answer to the letter.

MR. BALDWIN: I do not suggest you represent the Lamport & Holt in such a sufficient capacity to-day that I can demand of you to produce the letter yourself and you would not take the responsibility of it.

MR. KIRLIN: I do not represent Lamport & Holt, my friend Mr. Burlingham does that.

MR. BURLINGHAM: I represent Lamport & Holt.

MR. BALDWIN: Have you got the answer to that letter?

MR. BURLINGHAM: I have not got any answer to that.

WITNESS: I believe Mr. Montgomery has got it. 897

MR. MONTGOMERY: I believe possibly the answer is here.

MR. KIRLIN: As Mr. Montgomery has it he should be the one to produce it.

MR. BALDWIN: You were asked by Mr. Kirlin as to whether it was to the shippers interests at the Brazil ports to have a regular service with inter-changeability. Do you remember that? A. Yes.

Q. Would that be of any greater service to you or be 898
of any greater service to Hard & Rand if each one of these conference boats were running regularly and frequently as they do now, and have been since 1908 on regular schedule and as frequently if they were not in conference and not interchangeable? A. No. We desire a frequent service that can be depended upon to give us room to make our shipments.

Q. Then the inter-changeability is not an important item for Hard & Rand? A. No. If each one of the boat lines ran the same number of boats or a regular number on a 899
regular schedule, there would be no advantage to us to inter-change because they have a conference agreement.

Q. It would be of some advantage to you if they were running regular boats on regular shipments same as now and they were in competition so that you could get the benefit of lesser rates if they were in competition, wouldn't it? A. If we could get the same service at lesser rates it would certainly be to our benefit.

Q. Assuming that they were actually competing with the same boats giving the same service, it would be very much to your interests to send your coffee to New York 900
regularly by the ship that would take it cheaper?

MR. KIRLIN: I object to the assumption.

WITNESS: All things being equal, it would be to our interests naturally to ship by the line offering the cheapest freight.

The hearing adjourned until 2 p. m. on Monday, 3rd February, 1913.

901 New York, February 3rd, 1913.

Hearing resumed pursuant to adjournment.

Appearances: Same as at last hearing.

JAMES H. WADDELL recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. The partnership membership of Hard & Rand has been the same from 1908 down to the present time, has it
902 not, without change? A. No, I think there has been a change.

Q. What change? A. I think that—I am not certain whether one or two of the partners that are in now were not in then.

Q. Whom do you refer to, and how long have they been members? A. J. E. Johnson, Jr. and W. H. Hartranft.

Q. This Johnson is the resident partner in Rio, is he not? A. Yes.

Q. And who is Hartranft? A. He is here in New York.

903 Q. Well, what I wanted particularly to show, was the partnership of Hard & Rand constituting the partnership has been with these exceptions the same for a number of years; is that right? A. Yes, for a number of years.

Q. For instance, when Johnson was taken in then, he was a member here, or he was down in Brazil? A. Yes.

Q. And the same with reference to Hartranft? A. Yes.

Q. In answer to a question of Mr. Kirlin at the last hearing, you stated that the house in Brazil—branch houses in Brazil and London had their own capital. You didn't mean
904 that that capital was separate and distinct from the capital of Hard & Rand as a general partnership? A. No.

Q. In other words, they had special funds at these various places? A. Not at London, only in Brazil.

Q. You stated that each claim—I mean you stated that when Hard & Rand of Brazil made up claim for rebates they made up separate claims for each service; you mean by that that if they made a claim against the Lamport & Holt Line for coffee and for the same period of months that they would make up claim for rebate for coffee sent to the United Kingdom and the Continent. A. There was none shipped by Lamport & Holt to the other side.

Q. What line particularly did? A. The Hamburg South- 905
American and the Hamburg-American.

Q. When you made a claim for rebate against those two conference companies, do you mean to say you would make up a separate claim?

MR. SPOONER: Why don't you ask him how he does it.

MR. BALDWIN: He has already testified on the direct.

Q. You make up a separate claim for the coffee shipped 906
to the Continent and to New York; is that right? A. Yes.

Q. But it was under these same agreements that you testified to? A. Yes.

Q. Now, have you prepared a statement showing the rebates paid to Hard & Rand for the separate ports from 1908 down to the first of January, 1912? A. That is New York and New Orleans.

Q. Yes? A. Yes, for three years I have them.

MR. KIRLIN: He gave us that in detail.

MR. BALDWIN: No, I thought he did, but he did not. 907

Q. What were the rebates for New York, in 1909? A. On 436,741 bags.

Q. And from New Orleans? A. To New Orleans, 342,470 bags.

Q. And the total is 779,211, is it not? A. Yes.

Q. Now, for 1910 from January 31 to August 11? A. From September 1 to August 31, 265,875 bags.

Q. And New Orleans? A. 240,513 bags.

Q. And the total? A. 506,388 bags. 908

Q. 1911 and 1912? A. New York, 250,573 bags; New Orleans, 209,530 bags, making a total of 467,103.

MR. KIRLIN: Is that bags?

THE WITNESS: Bags, yes, sir.

MR. SPOONER: All your figures were bags, weren't they?

THE WITNESS: Yes, all bags.

Q. Have you ascertained what the rates were in 1905, 1906, 1907 and 1908, as I asked you to the other day? A. Yes, I have them here.

909 MR. KIRLIN: We object to any testimony prior to 1908, as immaterial, irrelevant and not within the scope of the issues.

Objection for all. Agreed all testimony is taken subject to this objection.

Q. Precisely. Now, what were the rates from 1905? A. 35c and 40c.

Q. Do I understand that to mean that for a part of the period the transportation rate was 35c and afterwards
910 changed to 40c? A. Yes.

Q. Which was the 35 rate; before the 40c rate? A. Yes, I gave them in order as the rates ruled—to December 31, 1905.

Q. Now, 1906? A. 40c, then 35c.

Q. And that means that the first part of 1906, the 40c rate obtained, subject to the change to 35c; is that right? A. Yes.

Q. Now, 1907? A. 35c to 15c to 25c to 10c.

Q. In other words, the highest rate was 35 and then
911 subsequently it went to 15 and then back to 25 and then down to 10c? A. Yes, sir.

Q. Now, 1908? A. 1908, 10c to 30c to 25c.

MR. KIRLIN: Can you tell how long the 10c rate lasted? What part of the year?

MR. BALDWIN: Don't you think you had better ask that on your cross?

MR. KIRLIN: No, I would like to get that together —very well, go on.

912 Q. Mr. Waddell, do you know whether any of the Lamport & Holt—what they call their fast boats carry coffee, or have been carrying coffee? A. Yes.

Q. All of them? A. Yes, as far as I know.

Q. Well, is it not true, that the larger boats or the faster boats, of the Lamport & Holt Line only carry a limited amount of coffee? A. No, they carry all they are capable of carrying.

Q. One or two of the Lloyd Brazileiro boats are very fast, are they not? A. That I don't know.

Q. You have not got very much knowledge of the Lloyd Brazileiro boats, have you, as to capacity or time they

take? A. I know they are very much smaller boats than 913
the Lamport & Holt and the Prince Line.

Q. All of them are small? A. Practically all of them are, yes; they are smaller than any of the boats that the Lamport & Holt and the Prince Lines own.

Q. How do they compare with the Hamburg-American boats? A. I don't know, but I think they are as large.

Q. Don't you remember testifying at your last hearing that not all of the Lamport & Holt boats—only a few were larger than the Lloyd Brazileiro? A. I will say that since I was here before, I have taken pains to look up the ton- 914
nage of these boats.

Q. If you have taken occasion to look them up and can state what they are, just give us the tonnage? A. The Lloyd Brazileiro boats have an average of about half the tonnage of the Lamport & Holt and Prince Line.

Q. You did not make any memoranda to show what the respective tonnage was? A. No.

Q. Now, in a general way, you would say they would average half the tonnage of the other boats? A. Yes, more or less, that is the way it looked to me.

Q. You were asked by Mr. Kirlin with reference to Peti- 915
tioner's Exhibit No. 120—that is the memorandum of agreement which you have identified concerning shipments of coffee from Rio and Victoria, page 344—you stated that under this agreement, part of the conditions thereof, is that sufficient tonnage to maintain service as was reasonably required to carry the coffee. Now, Mr. Waddell, I show you 120; can you point out any provision in that agreement to that effect? (Handing witness Exhibit No. 120.) A. It is in clause six. (Handing paper back to Mr. Bald- 916
win.)

Q. In making that statement in answer to Mr. Kirlin's question at the last hearing, you meant that to be provided for in paragraph six, that in event that they don't supply sufficient tonnage, then, you could use outside lines and make a proper statement when you made a claim for rebate? A. Yes.

Q. You don't find any direct provision that they will supply you with sufficient tonnage? A. Not in those words; only if they don't supply sufficient tonnage.

Q. In other words, you could go to other carriers without imperilling your claim for rebate? A. I should under-

917 Q. Now, Mr. Waddell, in your testimony at the last hearing and appearing at page 377 of the minutes, this question was asked you, "Do you mean that the usual course in this unloading is the usual course of the Lloyd Brazileiro line," and your answer was, "From my personal knowledge, yes." Now, just before that, Mr. Waddell, the answer just before that, you had stated that you had not seen the Lloyd Brazileiro boats unloading? A. That is right.

Q. Now, when you speak about this usual defect or
918 trouble in the unloading of boats, did you mean that it was common to the conference lines, or common to the conference lines and the Lloyd Brazileiro? A. Common to both the conference lines and the Lloyd Brazileiro.

Q. You testified before that you had seen the conference lines boats unload very frequently, that a part of your duty was to go down there and check up often times the cargo? A. I don't check the cargo, but I have seen them unload.

Q. You also testified you had never seen the Lloyd boats
919 unload? A. No.

Q. And then, how can you say that these careless or defective methods of unloading were common to both lines? A. We have our men in Brooklyn that are on the docks all the time, and we hear general talk on the docks, how this boat discharges and how that boat discharges; I don't know of any specific report.

Q. In the conference lines you have seen this method of loading you complain of? A. Yes, I have.

Q. You never saw the Lloyd Lines? A. No.

Q. You have heard that this same defective method ob-
920 tains in both? A. Yes.

Q. Mr. Waddell, I show you what purports to be a letter written by Lamport & Holt under date of the 30th of November, 1908, to Hard & Rand, and ask you whether you have ever seen it before? A. Yes, I have seen that.

Q. This is the letter that Hard & Rand received in reply to a complaint about damage to coffee shipped on one of the Lamport & Holt boats just prior to that? A. I don't remember the details—it looks like it.

Q. You could not state what that was? A. No, I don't remember.

Q. Does this letter refresh your recollection to state that

in November, 1908, up to that time, you had made some 921
claim against the Lamport & Holt Line for loss in coffee either due to the way it was shipped, stowed, loaded or unloaded? A. I don't remember.

Q. Do you remember whether or not there was any considerable amount—will you see if there is anything on that at all, that will refresh your recollection? (Handing witness letter.) A. I cannot tell from this what damages are spoken of at all.

Q. I offer so much of the letter as applies, namely the second paragraph with reference to the damage; if you 922
want it all, I will put it all in. (Hands letter to defendants' counsel.)

Marked Petitioner's Exhibit No. 125.

Q. Does not that refresh your recollection, Mr. Waddell, so that you can now state there were frequent complaints made by Hard & Rand against some of these conference lines' boats, because of the way the coffee was handled? A. I don't think there were frequent complaints. We had some complaints. I think considering the amount of coffee 923
we had shipped by the lines, the complaints were very few.

Q. But at particular times there were serious complaints? A. We have had some.

Q. Now, I show you a copy of a letter dated April 19, 1909; what is that letter? (Hands witness letter book.) A. Yes, I think I remember that now.

Q. Is this a copy of a letter sent by Hard & Rand to Lamport & Holt with reference to damaged bags? A. Yes.

Q. Damaged coffee? A. Yes.

MR. BALDWIN: Gentlemen, I don't suppose you 924
have been served with a notice to produce the original of this; now, if you want to stand on the formality of it, otherwise I will put that in.

MR. KIRLIN: Is it material?

MR. BALDWIN: In your examination you showed that the service was good. It is to show that it was not based upon fact. Here is a lot of them here, right in order.

MR. KIRLIN: We don't claim we have a perfect service. If there are small complaints here and

925 there, and they are remedied to the satisfaction of the shipper, I suppose we are entitled——

MR. BALDWIN: It is only whether or not you wish me to serve you with a subpoena.

MR. BURLINGHAM: The correspondence all seems to have gone to Liverpool.

MR. BALDWIN: Do you make objection to it on the ground that it is not the best evidence?

MR. KIRLIN: No.

MR. BURLINGHAM: No.

926 MR. BALDWIN: Then I will offer this letter in evidence. I shall have to offer that in view of Mr. Kirlin's cross-examination. I have two letters, dated April 19, 1909, and February 17, 1909.

MR. BURLINGHAM: You will put in their answer; you have got them all.

MR. BALDWIN: Yes.

MR. BURLINGHAM: There is always an answer to every complaint in this world.

MR. KIRLIN: I think we ought to have the copies
927 to have them put in with them.

MR. BALDWIN: I think that is a matter of re-cross, but for my purposes, to show that there was good ground for the complaint, after you had brought out from him a perfect service, I think that is all I want to give.

MR. KIRLIN: No, an "efficient service." That is the word I used; that is what the witness used.

MR. BALDWIN: The record shows; I offer that letter of that date, and I will take them *seriatim*. I
928 offer letter of April 19, 1909, at this particular time for identification.

Marked Petitioner's Exhibit No. 126 for identification.

Also three pages in Petitioner's Exhibit No. 111 for identification.

Also letter from Hard & Rand, per J. H. Waddell to Messrs. Busk & Daniels, February 17, 1909.

Marked Petitioner's Exhibit No. 127 for identification.

Also copy of Weigher's return of slack bags and sweepings, ex. S. S. *Tennyson* from Santos and Rio arrived January 20, 1909.

Marked Petitioner's Exhibit No. 128 for identification. 929

Also claim of Hard & Rand dated April 18, 1909, for damages to coffee on the steamship *Tennyson* page 193.

Marked Petitioner's Exhibit No. 129 for identification.

Also letter of April 28th, 1910, addressed to Lamport & Holt from Hard & Rand, being on page 203 of the same exhibit for identification.

Marked Petitioner's Exhibit No. 130 for identification. 930

Also memorandum purporting to be prepared by Messrs. Hard & Rand and referred to in letter of same date, April 28, 1910, at page 207, for identification.

Marked Petitioner's Exhibit No. 131 for identification.

Also letter of July 8th, 1910, to Lamport & Holt, from Hard & Rand, page 210 of same exhibit.

Marked Petitioner's Exhibit No. 132 for identification. 931

Also a letter of January 4, 1911 to Lamport & Holt from Hard & Rand on page 212 of same exhibit, for identification.

Marked Petitioner's Exhibit No. 133 for identification.

Also letter of August 11, 1911, from Hard & Rand to Lamport & Holt Line for identification.

Marked Petitioner's Exhibit No. 134 for identification.

932

By Mr. Baldwin:

Q. Mr. Kirlin, is that the letter you wanted yesterday at our last meeting?

MR. KIRLIN: That looks like it, dated 31st of March, 1908. Mr. Waddell has produced it as a reply to the letter that we were talking about, so I suppose it must be that.

Q. Shall we put it in as your exhibit? (Addressing Mr. Kirlin.)

933 MR. KIRLIN: As yours.

MR. BALDWIN: I will offer both the letter with which you are familiar, and the answer.

Marked Petitioner's Exhibits No. 135 and No. 136.

Q. In answer to a question of Mr. Kirlin at our last hearing, you testified that rates for coffee shipped by Hard & Rand either to the United States ports or to the Continent, or to the United Kingdom, that they were fixed by
934 your Brazil house. Do I understand you to mean that Hard & Rand either here in New York or any other place, had anything to do with fixing rates? A. Our managing partner in Brazil had charge of that business.

Q. Perhape you don't understand my question. Didn't the conference lines fix the rate? A. Yes.

Q. When you said in answer to that question of Mr. Kirlin that your Brazil house fixed the rate, what did you mean? A. I must have misunderstood the question.

MR. KIRLIN: Agreed on the rates.

935 THE WITNESS: The conference lines fixed the rates.

Q. The question of what the price for carrying was was never left by the lines to Hard & Rand, was it? A. Not that I know of.

MR. KIRLIN: Left it to Hard & Rand to say whether they would ship on that, wasn't it?

Q. Have you got the rebates for 1907 from Rio, Santos and Victoria? A. Yes.

936 Q. Will you just read them off, and state what they are?

Objection by the defendants to any testimony for rebates in 1907 as immaterial and outside the scope of the issues in this case.

A. The rebates on shipments from Rio, Santos and Victoria to the United States were as follows: for the year ending June 30, 1908, 937,134 bags, rebate collected, $18,-898.76. Shipments from Rio and Victoria to the United States for the year ending June 30, 1909 were on 728,105 bags, rebate collected was $19,266.84. Shipments from

Santos for July and August, 1908, on 68,289 bags, rebate collected, $896.29. Shipments from Santos for the year ending August 31, 1909 on 348,087 bags, rebate collected, $10,223.62. Shipments from Rio and Victoria to the United States for July and August, 1909, 58,552 bags, rebate collected, $2,014.71. 937

Q. Have you prepared the rebates from any of the conference lines for the years 1910 and 1911 for the coffee shipments to Europe? A. Yes.

Q. You have got those two years, have you? A. 1910 to 1911 and 1911 to 1912. 938

Q. What about the three years prior to that? A. I have not got them.

Q. You may state what those rebates were to Europe from the conference lines.

MR. KIRLIN: The defendants object to that as immaterial, irrelevant, not bearing on the issues under our pleadings. I object specially also for the Prince Line on the ground that it also appears that the Prince Line was not operating any service from Brazil to Europe in that period. 939

THE WITNESS: Shipments to Europe for the year ending August 31, 1911, from Rio, on the Hamburg-South American Line, $153.21, Hamburg-American Line, $137.92, North German Lloyd, $135.88 from Victoria, Hamburg-South American Line, $8.61, from Santos, Hamburg-South American Line, $844.94; Hamburg-American Line, $289.49; North German Lloyd, $1,047.02. For the year ending August 31, 1912, shipments from Rio, Hamburg-South American Line, $216.39, Hamburg-American Line, $70.37. Shipments from Victoria for the Hamburg-South American Line, $120.79; Hamburg-American Line, $51.80; from Santos for the South American Line, $775.44, Hamburg-American Line, $431.82, North German Lloyd, $1,037.30. 940

Q. Now, what was the rate of rebate for the year 1911?

MR. KIRLIN: All this testimony, may it be understood, is taken subject to the same objection.

A. All ten per cent.

941 MR. SPOONER: I want to move to strike out all evidence given by this witness regarding rebates on coffee from Brazilian ports to European ports and Continental ports on the ground that it is not within the issues and incompetent and irrelevant.

Q. Mr. Waddell, are you quite sure it was ten per cent.? I show you Exhibit No. 124. Mr. Montgomery called my attention to it; at least from Santos? A. I think I made a mistake on this last year. The last year was 9¾%, 1911
942 to 1912.

Q. Same rate of rebate from each port? A. Yes. The year before was ten per cent.

Q. For either one of these years was it ever at 15%? A. No.

MR. KIRLIN: Are you talking about rebates to Europe?

THE WITNESS: Yes.

MR. SPOONER: That was included in my objection.

943 CROSS-EXAMINATION by Mr. Kirlin:

Q. Mr. Waddell, you have stated the amount of rebates received for the year ending June 30, 1908; can you state over what part of the year from June 30, 1907 to June 30, 1908 the shipments were made on which those rebates were paid? A. It extends over the full year as far as I remember.

Q. Do you find any rebates for 1906 and 1907? A. I have not looked back as far as that.

Q. Mr. Baldwin asked you about 1907? A. 1907 to 1908
944 and 1908 to 1909. I did not go back further than that.

Q. Have you anything before you that indicates just when the shipments were made on which the rebates amounting to $18,898.76 for the period ending June 30, 1908 were made? A. I have no figures here from which I can tell about that.

Q. Now, you told us that during a part of 1907 and a part of 1908, coffee rates were down to ten cents? A. Yes.

Q. Was not that a period when there was no conference in effect? A. I think that a conference was in effect then but there were no rebates paid on such low rate of freight as that.

MR. BALDWIN: I ask to have that stricken out on the ground that the witness obviously does not know anything about it. He says he simply thinks so. It is incompetent if he has no knowledge. 945

Q. Was not the reason because there was a fight on? A. I don't know the reasons.

MR. KIRLIN: I wish you would get and produce as part of your testimony the dates on which the shipments were made on which rebates were paid. The period of that twelve months. 946

THE WITNESS: It is for June 30, 1908.

By Mr. Kirlin:

Q. That was the time that the claim was put in? A. You want to know on which shipment the rebate was made?

Q. The point is this, the petition states that the conference was entered into in February, 1908, and you stated that during 1907 and 1908 the rates were down to ten cents. I want you to find out and let us know the dates on which the shipments were made in respect to which you received the sum of nineteen thousand odd dollars for the year ending June 30, 1908. You have spoken about rebates paid on European shipments, and we have objected to that, and, without prejudice to my objection, I will ask you whether the figures that you have before you indicate what the comparative rates were during the periods that you received rebates on shipments to Europe? A. I have no details of rates at all yet. 947

MR. BALDWIN: Mr. Kirlin, if he knows anything about it, I don't object to it, but if he is going to guess I object to it. 948

MR. KIRLIN: You have told us what your shipments have been; tell us what the Arbuckle shipments have been from New York to New Orleans from the four reports (referring to Core & Herbert's reports).

MR. BALDWIN: Those four reports are not in evidence in toto.

MR. KIRLIN: We have agreed that he might take figures off of them.

THE WITNESS: (Reading from report of Core &

949 Herbert.) Coffee received by Arbuckle Brothers for the year ending December 31, 1909, at New York 397,694 bags for the year ending December 31, 1910 at New York, 465,873 bags; for the year ending December 31, 1911 at New York, 77,413 bags; apparently nothing at New Orleans; for the year ending December 31, 1912, 410,988 bags; seems to be nothing at New Orleans.

MR. BALDWIN: I want to put an objection on the record not to the question of the source of information, but I want a general objection with reference 950 to the Arbuckle importations as immaterial, irrelevant and not responsive to any question asked either on the direct or re-direct.

MR. KIRLIN: We will ask him about the Arbuckles; he said they used the Lloyd Brazileiro service, and I want to show that this came into competition.

By Mr. Kirlin:

Q. Now, this coffee imported by Arbuckle Brothers 951 entered into competition with coffee imported by Hard & Rand, did it not?

MR. BALDWIN: I object to that as incompetent, irrelevant and immaterial. He cannot possibly know whether it is or not, unless he is qualified in some way to show that he did know, and also as not responsive to any question asked on the direct or re-direct.

THE WITNESS: Presumably did.

MR. BALDWIN: I ask to have it stricken out.

952 MR. KIRLIN: The fact that that coffee imported by Arbuckle Brothers was imported, and put upon the market, tended to go into and to some extent fix the market price during that period, did it not?

MR. BALDWIN: I object to that as incompetent, immaterial and irrelevant, not responsive to any question asked upon the direct or re-direct, and he has not shown himself qualified to make any statement on the subject, and it is merely a guess.

THE WITNESS: That is something outside of my line that I don't keep track of, and I don't want to answer.

By Mr. Kirlin: 953

Q. You have given some testimony about the market value of coffee, about spot coffee and futures and the elements that entered into the correct value of coffee. Now, is not your knowledge of the business sufficient to enable you to say that the importation by Arbuckle Brothers of the quantities of coffee that you have just testified to during those periods must of necessity have had something to do with the market price of coffee sold in this country?

MR. BALDWIN: I may add another objection; you have asked him to speculate. 954

THE WITNESS: Naturally that volume shipped here to the United States must have some bearing on the market.

Q. It was sold in this country, was it not?

MR. BALDWIN: If you know.

A. It must have been, as Arbuckle exports very little.

Q. And if that mass of coffee imported by Arbuckle got a lower freight rate than the coffee that was imported by 955 your firm, that lower freight rate also went into the market price as an element.

MR. BALDWIN: I object to that; same objection as before—nothing to show that they did get the benefit.

Q. I say "if" they did? A. It would be an element in the cost price laid down in New York.

Q. About what is the value of a ton of coffee such as is ordinarily imported from Brazil? A. We don't usually speak of tons of coffee. 956

MR. BALDWIN: The value of it?

MR. KIRLIN: Yes.

MR. BALDWIN: Would not that fluctuate from day to day?

MR. KIRLIN: A quarter of a cent, perhaps.

THE WITNESS: I should say from $250 to $300.

Q. A ton? A. Yes.

Q. It is classed amongst very valuable cargoes carried by the ships, is it not? A. Yes.

957 Q. And is that a reason why it is desirable that it should be handled by persons who are very experienced, and carried in ships that are regularly in the habit of carrying it? A. It is.

Q. It is a cargo that is readily impregnated by fumes? A. Very readily.

Q. Would a ship that carried patroleum or any cargo that threw out an odor be the right kind of a ship to carry coffee? A. No, it would not be.

Q. Now, as I understood your direct testimony, ordi-
958 narily year in and year out the lines have provided what you regard as an efficient service? A. Yes.

Q. Your attention has been called to some complaints; we have not had a chance to look at those and look at the details of them—is it not a fact that in all trades there are always claims coming up for damage or slackage or something of that sort of individual shipments?

MR. BALDWIN: I object to that as immaterial; he is not qualified to show what is the condition in other trades.

959 THE WITNESS: I am not conversant with other trades, but I know that claims are made on other classes of goods besides coffee.

Q. And they are made ocassionally on coffee and if they are found to be well founded they are always settled?

MR. BALDWIN: I object to that as immaterial.

THE WITNESS: Yes.

960 Q. Does the fact that these letters involve complaints lead you to modify in any way the testimony that you have already given that the service has not been a regular and efficient one? A. No.

Q. In whose name is the coffee shipped from Brazil to New York? A. Hard, Rand & Company.

Q. And bills of lading are so made out? A. Yes.

Q. Is the invoice from Brazil to Hard, Rand & Company to New York? A. Some of it to New York and some to London, depending upon where the shipments go.

Q. Speaking now of the shipments from Brazil to this country, are those shipments sold during transit from the

Brazilian house by bankers, and by bankers to the New York house? 961

MR. BALDWIN: I object as immaterial.

THE WITNESS: I don't understand.

Q. When your Brazil house makes a shipment to your New York house is there any draft drawn against it? A. The drafts are sold in Brazil.

Q. Drafts representing the value of the shipments? A. Yes.

MR. BALDWIN: I object to all that testimony. 962

Q. And the total is held during transit by the bank? A. In some cases.

Q. When the draft is sold it must be? A. Yes, that is the regular mode.

Q. The regular mode of delivery is that you take the bill, invoice, insurance certificate and draft to the bank and sell it? A. Yes.

Q. In Brazil? A. Yes.

Q. Is there any special bank or any special number of 963 banks that finance the coffee shipments to New York? A. All the large Brazil banks handle that business.

MR. BALDWIN: Objection.

Q. Then when the coffee arrives here in New York your New York house buys the draft and presents the document, and pays the draft? A. Not necessarily right away; the drafts are on ninety days sight.

Q. That is substantially the same thing? A. It is held in trust for the bankers. 964

Q. It is the bankers coffee when it arrives here? A. Yes.

Q. And your firm then pays the draft, or gets possession through the medium of a trust receipt, and then takes delivery of the cargo under shipping documents? A. Yes, sir.

Q. That is done by the New York house? A. Yes.

Q. That is the regular practice, is it? A. Yes.

Q. Mr. Waddell, without referring to documents, can you tell us whether the insurance which obtains on coffee shipments by the conference lines to the United States are any different than the rates which it has to pay either on the

965 Lloyd Brazileiro or the chartered ships? A. I don't know whether they are more or less on outside boats.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. With reference to your testimony as to an efficient service, you have already testified, have you not, in answer to a prior question of mine, that concerning the efficiency of the Lloyd Brazileiro, you have no knowledge at all? A. Not personal knowledge.

Q. In other words, you know nothing about their capacity
966 for loading, their facilities for loading, their capacity for stowing, their method of loading and delivery—you know nothing about if of your own knowledge? A. Not directly of my own knowledge, no.

Q. And you think that the service of the conference lines had been uniformly good, although there has been shown to you during a period of from 1908 to 1911 a series of more than a dozen complaints, more or less serious, concerning the method of handling and storing and the unloading of the cargo, involving claims for a considerable amount of
967 money? A. We can say that the service has been satisfactory.

Q. You have not had an opportunity to compare that service with any other lines at all, have you? A. No.

Q. Now, you were asked by Mr. Kirlin whether or not it was not important that coffee being a valuable cargo, should not be carried in a way not to be impregnated by fumes such as petroleum. Do not any of the boats of the conference lines carry other commodities besides coffee? A. They do, yes.

968 Q. Don't you know as a matter of fact that they carry petroleum? A. Not in with the coffee.

Q. But in the same hold space, don't they; or don't you know anything about it? A. I don't know, but it is understood that no coffee is put in the hold with petroleum.

Q. That is true with all these carriers that carry coffee at all? A. Any line that knows anything about it would not do it.

Q. Well, some of these boats—none of these boats carry any coffee from here to Brazil, do they? A. Coffee to Brazil?

Q. Yes? A. I never heard of it.

Q. So that what may be the character of the cargo that goes from the United States ports to Brazil, you know nothing about it? A. No. 969

Q. So far as you know they may carry petroleum or other commodities that have more or less fumes, or odors as far as you know, and in the same space or compartments in which coffee comes back? A. As far as I know it may be.

Q. Now you spoke of coffee being valued at about $250 to $300 a ton? A. Yes.

Q. Doesn't that depend entirely upon the market value of the coffee? A. Yes. 970

Q. And that fluctuates? A. Yes.

Q. And sometimes quite violently? A. Yes, sir.

Q. So that when you say the value is between $250 and $300 a ton, that is that difference embraces the possible fluctuations? A. It gives about two cents a pound fluctuation.

Q. Do you do both a cost and freight business? A. Yes, we do.

Q. What is there to differentiate? A. Coffee is sold cost and freight when the seller only stands the freight charge, nothing else after shipment from the shipping port. 971

Q. Mr. Waddell, as a matter of fact, would you call the cost and freight business, where you sell the coffee here, the buyer pays it. Cost and freight, is not that what it means? You have a commitment for any amount of coffee to some purchaser or purchasers here and it is on the basis of cost and freight; they pay the cost and freight, don't they, in the price they pay you? A. Yes.

Q. So as an importer you don't pay that; it is charged to them, is it not? A. The seller pays the freight; that is what it means. The seller pays the cost and the freight. 972

Q. You mean the seller in Brazil? A. The only expense that the seller pays is the freight attached to the first cost. All the other charges, marine insurance, anything else, is on account of the buyer.

Q. You heard the testimony of Mr. Lowry the other day? A. I did not; I was not here.

Q. Are you quite satisfied that you have got that right? A. Yes.

Q. Do you import for your own account and separate

973 and distinct from your commitments, what is called cost and freight? A. Yes, we do.

Q. Do you mean that that which you import for your own acount for the purchases stand on the same basis as that which you do not import on your own account or commitment? A. In case of freight shipments the freight is deducted from the cost to the buyer, and the buyer pays the freight here.

Q. Doesn't he pay it? A. No, we actually pay it. He makes the physical payment.

974 Q. And you deduct it afterwards? A. No, we deduct it before. All cost and freight invoices are made up cost less freight. It comes out of us.

Q. Do you know whether Arbuckle does a cost and freight business? A. I don't know.

Q. Now, Mr. Waddell, do you know anything at all about where Arbuckle sell their coffee and to whom? A. No.

Q. Or at what places? A. I don't know anything about it.

Q. So that in answer to a question that Mr. Kirlin pro-
975 pounded, it would—you guessed about it? A. I don't know what question.

Q. With reference to Arbuckle selling their coffee here and having practically the same steamers? A. I understand—I understood him to ask whether it had any effect on the market.

Q. Do you know anything about it? A. I know they sell in the United States.

Q. Do you know in what proportion? A. No.

Q. How do you know it? A. Because they don't export any.

976 Q. Do you watch the export figures? A. Yes.

Q. Do you know whether they sell to the adjacent countries like Canada and Mexico? A. They may sell some to Canada, but a very small amount.

Q. Where do you get your information? A. General knowledge in the trade that they are not exporters of coffee.

Q. And that general knowledge is what you base your statement upon without looking it up personally? A. I know by general knowledge.

Q. Do you know of any bulletin issued by the Government that shows the importation? A. No, I don't know of any.

Q. Then how do you get this information—where do you 977
get it, in other words? A. Commercial papers, Journal of Commerce, Tea and Coffee Trade Journal, and others.

Q. Do you mean that you compare that and look to see what have been the clearances here? A. No, I don't do that specifically.

Q. Well, do these trade papers that you speak of set forth in any way any succinct knowledge what the export business of anybody is? A. I don't know whether they go into specific figures as to shipments by any given firms. It would soon be known in the trade at once if Arbuckle 978
was doing an export business.

Q. How would it be known and what would occasion the knowledge becoming general? A. It would be well known in the street common report.

Q. In other words, this coffee business is of such a nature and so specialized, perhaps limited to very large importers, that if there is any particular movement of coffee except in the ordinary channels of consumption, it would be known; is that what you mean? A. Yes, sir.

Q. You have no knowledge of what rates Arbuckle pay 979
for their coffee they bring in from Brazil, have you? A. No.

Q. Or how they bring it? A. No.

Q. You don't know anything about the class or capacity of the vessels they use, do you? A. No.

Q. How do you know they don't—you do know they don't use the conference lines, don't you? A. I don't believe they have for some time.

Q. Or for some years as a matter of fact? A. No, sir.

Hearing adjourned to Thursday, February 6, 1913 at 980
10.30 A. M.

981 New York, February 6, 1913.

Hearing resumed pursuant to adjournment.

Appearances:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. SPOONER & COTTON, by George S. Franklin, Esq., for Paul Gotthiel, et al.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by
982 Charles Burlingham Sr., Esq., and Charles Burlingham, Esq., for Frederick T. Busk, et al.

THE EXAMINER: Just make a note that Mr. Kirlin is not present, but has consented that the examination proceed in his absence.

LORENZO DANIELS recalled.

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Daniels, you were asked on December 12, on page 110 of the record to produce a letter from your principals
983 covering the agreement, Exhibit 1 in the petition, that is the traffic agreement of February 14, 1908. You were asked to make a further search for that, or a search; have you done so? A. Yes, we have.

Q. Have you found such a letter? A. It has not been found. I want to correct the statement there that the traffic agreement number one, or Exhibit number one, I think I testified that I didn't think we ever received it in its entirety. We had an abstract from it, but the agreement itself was produced by the Hamburg Line only a year or
984 so ago. They had it, or produced it. We never had a copy.

Q. But you had minutes of it? A. We had an extract from it. That has been produced, I am sure.

Q. You think that has been produced? A. I am sure that was produced at the time.

Q. At what time, Mr. Daniels? A. I am sure we gave that to the District Attorney a year and a half ago when they asked for our papers.

Q. You never produced it here, Mr. Daniels? A. I was under the impression that I did. Mr. Burlingham says it is not among the original papers.

Q. Did you find the letter with which that abstract came 985
to you from abroad? A. We did not.

Q. Do you know whether there was a letter accompanying it? A. I cannot say—I cannot be positive, but I should imagine that there might have been. Our record would show from reference to it.

Q. Have you searched for the letter accompanying this memorandum? A. I have searched most carefully.

Q. And have not found it? A. I understand not.

Q. Now, I see that on the same pages 149, 150 and 151 of this record you were asked in regard to the minutes of 986
the London conference, and you had not been able at that time to find any of those minutes. Have you made any further search for copies of the London minutes? A. We have searched carefully through all that we have; I don't know whether they have been found or not. My office has done so.

Q. Did you find any of those, Mr. Burlingham?

MR. BURLINGHAM: No.

Q. You have none of the abstracts of the London meet- 987
ings? A. We have found none.

Q. Now, Mr. Daniels, a subpoena, dated December 27, 1912, was served on you calling upon you to produce——

MR. BURLINGHAM: What is the number of the item?

MR. BALDWIN: He is identifying it generally now.

By Mr. Montgomery:

Q. Calling upon you to produce certain documents. I call your attention to the first paragraph; original letter from Lamport & Holt to Busk & Jevons, dated November 988
18th, 1905.

MR. BURLINGHAM: We have declined to produce that on the ground that it is long prior to the agreement in suit, irrelevant and immaterial.

MR. MONTGOMERY: You decline to produce it?

MR. BALDWIN: Just make a minute of that. Mr. Burlingham, let me make a suggestion. I don't see how he has any right to disobey the subpoena. The question of its relevancy arises when it is offered.

MR. BURLINGHAM: Mr. Baldwin, we have reserved a considerable number of questions, as perhaps you

989 know, to submit to the Court and many of them are questions calling for information with regard to matters prior to 1908.

MR. BALDWIN: But that is not my point, Mr. Burlingham. It has been decided a number of times frequently in the Heike case, and in one of the other sugar cases that the subpoena must be complied with. You must produce. I don't see how you can forestall the process of the Court. The question of competency and relevancy comes up when it is pro-
990 duced.

MR. BURLINGHAM: I think there is something in what you say on that.

MR. BALDWIN: I am going to be frank. When I come to examine Daniels, he has got to state his reasons why he declines to answer and I am going to lay the foundation in an entirely different way, than I have done before. I want the documents here for our right to offer. I don't think we will gain any time by his disobeying the subpoena.

991 MR. BURLINGHAM: He is only doing it by my advice.

MR. BALDWIN: I assume that. In view of the proposition, don't you think that when it comes to offering it, its competency and relevancy may be determined.

MR. BURLINGHAM: I will think that over until the next session. (Referring to subpoena.) That runs down through twenty-two, doesn't it?

MR. BALDWIN: I think for the purposes of the record you must identify them, what you call for.
992 Just state on the record what they are.

By Mr. Montgomery:

Q. Now, paragraph two calls for original letter, Lamport & Holt to Busk & Jevons, dated January 5, 1906.

MR. BURLINGHAM: I make the same statement with regard to that.

Q. Paragraph three, the letter of January 19th, 1906, Lamport & Holt to Busk & Jevons?

MR. BURLINGHAM: Same.

Q. Paragraph four, original letter of Lamport & Holt to Busk & Jevons, dated September 9th, 1906? 993

MR. BURLINGHAM: Same.

Q. Paragraph five, original letter from Lamport & Holt to Busk & Jevons, September 8th, 1906?

MR. BURLINGHAM: Same.

Q. Paragraph six, original letter from Lamport & Holt to Busk & Jevons, dated September 28th, 1906? 994

MR. BURLINGHAM: Same.

Q. Paragraph seven, original letter from Lamport & Holt to Busk & Jevons, dated November 7, 1906.

MR. BURLINGHAM: Same.

Q. Paragraph eight, original letter from Lamport & Holt to Busk & Jevons dated November 14, 1906?

MR. BURLINGHAM: Same; you have got them all, I suppose, because you are calling for them. 995

MR. MONTGOMERY: Some of them we have in full, and some we have extracts. We have not the originals of any.

MR. BALDWIN: If we have either the copies of any of these here, he will not raise any questions of not being the original.

MR. BURLINGHAM: I say you quote from each one, so you must have them.

MR. MONTGOMERY: We have in some cases the letter, and in some cases extracts.

Paragraph nine, original letter from Lamport & Holt to Busk & Jevons, dated November 16th, 1906. 996

MR. BURLINGHAM: Same.

MR. MONTGOMERY: Paragraph ten, original letter from Lamport & Holt to Busk & Jevons, December 14th, 1906.

MR. BURLINGHAM: Same.

MR. MONTGOMERY: Paragraph eleven, original letter from Lamport & Holt to Busk & Jevons, dated December 28th, 1906.

MR. BURLINGHAM: Same.

MR. MONTGOMERY: Paragraph twelve, original

997 letter from Lamport & Holt to Busk & Jevons, dated January 11th, 1907.

MR. BURLINGHAM: Same.

MR. MONTGOMERY: Paragraph thirteen, letter from Lamport & Holt to Busk & Jevons, dated April 13, 1907.

MR. BURLINGHAM: Same.

MR. MONTGOMERY: Paragraph fourteen, original letter from Lamport & Holt to Busk & Jevons, dated April 20th, 1907.

998 MR. BURLINGHAM: Same.

MR. MONTGOMERY: Paragraph fifteen, original letter from Lamport & Holt to Busk & Jevons, dated May 17th, 1907.

MR. BURLINGHAM: Same, leave out the original.

MR. MONTGOMERY: Paragraph sixteen, copy of letter from Lamport & Holt to James Knott, Esq., which accompanied the above, May 16th, 1907.

MR. BURLINGHAM: Same.

MR. MONTGOMERY: Paragraph seventeen, letter from Lamport & Holt to Busk & Jevons, dated May 999 21, 1907.

MR. BURLINGHAM: Same.

MR. MONTGOMERY: Paragraph eighteen, original letter July 6th, 1907.

MR. BURLINGHAM: I will say in regard to this that we have hunted for this letter and have been unable to find it. I won't raise that, if you have got copies of them.

MR. MONTGOMERY: We have only an extract from that letter.

1000 MR. BURLINGHAM: You are now referring to paragraph eighteen.

MR. MONTGOMERY: Yes, of the subpoena.

MR. BURLINGHAM: We have searched for that letter and have been unable to find it.

MR. MONTGOMERY: Have you the letter book for that period, Mr. Daniels?

THE WITNESS: Yes.

MR. BALDWIN: Where is it?

MR. BURLINGHAM: We have not found it; we have no such letter.

MR. BALDWIN: Now, we must have got the extract

THE WITNESS: You had all the books at one time. 1001

MR. BURLINGHAM: We will make no objection from eighteen to twenty-two inclusive, so eighteen you strike out what I said.

MR. MONTGOMERY: That appears to be in your letter book number twenty-nine.

MR. BURLINGHAM, JR.: I don't think it is. We have been going through twenty-nine with great care.

MR. BURLINGHAM: Just strike out all the rest about eighteen. We will look for it. Say the same. 1002

MR. MONTGOMERY: Paragraph nineteen, original letter from Lamport & Holt to Busk & Jevons, July 19, 1907.

MR. BURLINGHAM: We have been unable to find it but we will look for it again.

MR. MONTGOMERY: Paragraph twenty, letter from Lamport & Holt to Busk & Jevons, dated August 23, 1907.

MR. BURLINGHAM: We have been unable to find it but we will look again. 1003

MR. MONTGOMERY: October 2nd, 1907.

MR. BURLINGHAM: We have not been able to find it but we will look again.

MR. MONTGOMERY: Paragraph twenty-two, October 24th, 1907.

MR. BURLINGHAM: We have not been able to find it but we will look again.

MR. MONTGOMERY: Paragraph twenty-three; January 6th, 1908.

MR. BURLINGHAM: We produce it. 1004

MR. MONTGOMERY: I ask to have that letter marked for identification.

Marked Petitioner's Exhibit No. 136 for identification.

MR. MONTGOMERY: Letter, dated January 31, 1908 to Busk & Jevons from Lamport & Holt.

MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 137 for identification.

MR. MONTGOMERY: Paragraph twenty-five; letter from Lamport & Holt to Busk & Jevons, dated Febuarary 14th, 1908.

1005 MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 138 for identification.

MR. MONTGOMERY: Letter from Lamport & Holt to Busk & Jevons, dated February 21, 1908.

MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 139 for identification.

MR. MONTGOMERY: Paragraph twenty-seven of the subpoena; letter, dated March 13, 1908.

1006 MR. BURLINGHAM: We produce.

Marked Petitioner's Exhibit No. 140 for identification.

MR. MONTGOMERY: Paragraph twenty-eight of the subpoena; letter from Lamport & Holt to Busk & Jevons, dated March 18th, 1908.

MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 141 for identification.

MR. MONTGOMERY: Paragraph twenty-nine of the
1007 subpoena; letter from Lamport & Holt to Busk & Jevons dated May 7, 1908.

MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 142 for identification.

MR. MONTGOMERY: Paragraph thirty of the subpoena; letter from Lamport & Holt to Busk & Jevons, dated July 23rd, 1908.

MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 143 for identifi-
1008 cation.

MR. MONTGOMERY: Paragraph thirty-one of the subpoena; letter from Lamport & Holt to Busk & Jevons, dated August 5, 1908.

MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 144 for identification.

MR. MONTGOMERY: Paragraph thirty-two of the subpoena; letter of September 18th, 1908, from Lamport & Holt to Busk & Jevons.

MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 145 for identification.

MR. MONTGOMERY: Paragraph thirty-three of the 1009
subpoena; letter from Lamport & Holt to Busk &
Jevons, dated September 18th, 1908.

MR. BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 146 for identifi-
tion.

MR. MONTGOMERY: Paragraph thirty-four of the
subpoena, letter from Lamport & Holt to Busk &
Jevons, dated September 30, 1908.

MR BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 147 for identifi- 1010
cation.

MR. MONTGOMERY: Paragraph thirty-five of the
subpoena, letter from Lamport & Holt to Messrs.
Schill, Seebohm & Company, Limited, dated Sep-
tember 30, 1908.

MR BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 148 for identifi-
cation.

MR. MONTGOMERY: There appear to be two para-
graphs marked thirty-five. We will call this para- 1011
graph thirty-five A in the subpoena; an original
letter from Lamport & Holt to Busk & Jevons,
dated September 18th, 1908.

Marked Petitioner's Exhibit No. 149 for identifi-
cation.

MR. MONTGOMERY: Paragraph thirty-six in the
subpoena, an original letter from Lamport & Holt
to Busk & Jevons dated January 13, 1909.

MR BURLINGHAM: We produce it.

Marked Petitioner's Exhibit No. 150 for identifi-
cation. 1012

MR. MONTGOMERY: Paragraph thirty-seven; letter
from Lamport & Holt to Busk & Daniels, dated Jan-
uary 15th, 1909.

MR. BURLINGHAM: Produced.

Marked Petitioner's Exhibit No. 151 for identifi-
cation.

MR. MONTGOMERY: Paragraph thirty-eight, of the
subpoena, copy of letter dated January 8th, 1909
from Lamport & Holt to Alfred Woods.

MR. BURLINGHAM: Produced.

Marked Petitioner's Exhibit No. 152 for identifi-
cation.

1013 MR. MONTGOMERY: Paragraph thirty-nine of the subpoena, letter from Lamport & Holt to Busk & Daniels, dated April 8th, 1909.

MR. BURLINGHAM: Produced.

Marked Petitioner's Exhibit No. 153 for identification.

MR. MONTGOMERY: Paragraph number forty of the subpoena, letter from Lamport & Holt to Busk & Daniels, dated May 18th, 1909.

MR. BURLINGHAM: Produced.

1014 Marked Petitioner's Exhibit No. 154 for identification.

MR. MONTGOMERY: Now, Mr. Daniels, paragraph 41 of the subpoena, calls upon you to produce all cables sent by Lamport & Holt to Busk & Jevons or Busk & Daniels, referred to as confirmed in the above letter. That is to say, confirmed in the letter from Lamport & Holt to Busk & Daniels, dated May 18th, 1909.

MR. CHARLES BURLINGHAM: I have looked for those, and so far have not been able to find them.

1015 MR. BURLINGHAM: The answer on the record is that Mr. Daniels has searched for them and caused a search to be made, and has been unable to find them.

MR. MONTGOMERY: Now, as I understand it, Mr. Daniels, these cables were sent up to Mr. Burlingham's office and they have gone through them for you?

THE WITNESS: Gone through them for us.

By Mr. Montgomery:

1016 Q. But you personally have not looked at this? A. Personally I looked over a good many to see that all the books were there before they were sent out.

Q. You have not looked through the cables with reference to this particular paragraph of the subpoena? A. Personally I have not, but I have asked our office staff who are familiar with them.

Q. And they have done that? A. Yes.

By Mr. Baldwin:

Q. They have reported that they did it? A. There is no doubt they did it.

By Mr. Montgomery: 1017

Q. It may be a little bit doubtful as to what cables were confirmed by that letter, and they might not know, and you might? A. No, the clerks are more familiar with that class of work than I am, that is with the files and references and cases.

Q. What do you suppose became of those cables? A. I have not the remotest idea. We have rarely ever occasion to refer back to the period that you are referring to now.

By Mr. Baldwin: 1018

Q. Mr. Daniels, what is the practice in your office with reference to keeping cables? A. I think these cables are pasted in a book.

Q. I am not asking about these cables; what is the practice in regard to keeping cables you receive? A. We have different practices; Lamport & Holt cables are all pasted in a book.

Q. And that book that contains all those cables you sent up to Mr. Burlingham's office? A. The books were, yes, sir.

Q. I suppose there is a book for each year? A. When 1019 one book was—unless one book was filled up in the meantime.

Q. You just have a book and paste in these cables until it is filled? A. Yes.

Q. And then you take another book? A. Yes.

Q. In responding to this subpoena, all you did was send the book up, is that the idea, to Mr. Burlingham's office? A. No, the clerks who were familiar with the work assisted in handing up the details.

Q. It is not your custom to destroy the cables? A. No, it 1020 is not our custom.

Q. Do you know of any instances with reference to the Lamport & Holt cables affecting the business of these conference lines in any way, or with reference to instructions to yourselves where they have been destroyed? A. Not to my knowledge, no.

By Mr. Montgomery:

Q. I notice, Mr. Daniels, that the subpoena does not appear to call for the cables confirmed by the letter of May 7th, 1909, from Busk & Jevons to Lamport & Holt in which

1021 Arbuckle Brothers (which is Exhibit 87 for identification) evidently written by yourself, initialled L. D., J. S. at the bottom, which letter refers to a cable of the 5th instant. I will read this: "Arbuckle Brothers, We confirm cables exchanged, and have no answer from you to our cable of the 5th instant. We are in doubt as to whether you are intending to reply. We have not told Arbuckle fully as yet the contents of your cable of the 5th instant." Now, Mr. Daniels, I think the subpoena does not call upon you to produce that cable; do you know whether you have it? A.
1022 Which cable have you reference to.

By Mr. Montgomery:

Q. The cable from Lamport & Holt to Busk & Jevons, dated the 5th of May, 1909? A. I could not say without having it searched for.

Q. That ought to be in your cable book.

MR. BURLINGHAM: Do you want us to look for it?

MR. MONTGOMERY: Yes.

MR. CHARLES BURLINGHAM: I tried to look for it; I
1023 will look for it again.

MR. MONTGOMERY: Paragraph forty-two of the subpoena calls for a copy—calls for copies of all cables sent by Busk & Daniels or member thereof to Lamport & Holt or member thereof, referred to in the letter of Lamport & Holt to Busk & Daniels, May 18th, 1909. Did you find any of those cables?

MR. CHARLES BURLINGHAM: No, the same situation exists there as in regard to call number forty-one.

1024 Q. I wish you would make a further search for those, Mr. Daniels, and have them here this afternoon? A. I will be very glad to do so.

MR. MONTGOMERY: Paragraph forty-three of the subpoena calls for letter from Lamport & Holt to Busk & Daniels, dated August 17th, 1909.

MR. BURLINGHAM: Produced.

Marked Petitioner's Exhibit No. 155 for identification.

MR. MONTGOMERY: Paragraph forty-four, letter from Lamport & Holt to Busk & Daniels, dated September 10, 1909.

MR. BURLINGHAM: Produced. 1025

Marked Petitioner's Exhibit No. 156 for identification.

MR. MONTGOMERY: Paragraph number forty-five of the subpoena, original letter from Lamport & Holt to Busk & Daniels, dated September 17, 1909.

MR. BURLINGHAM: Produced.

Marked Petitioner's Exhibit No. 157 for identification.

By Mr. Montgomery: 1026

Q. In regard to paragraph number forty-six, Mr. Daniels, it calls upon you to produce certain books, journals and so forth, showing payments of rebates to Hard & Rand. I don't know that it is necessary to bring those books. You have not brought them, have you?

MR. BURLINGHAM: No, we will admit that we made the payments.

MR. BALDWIN: That is not sufficient.

Q. Mr. Daniels, if you will prepare a statement showing 1027
the payments by Busk & Jevons and by Busk & Daniels to Hard & Rand, and to any other shippers of coffee, of rebates during the period from June 5, 1907, down to the present time, it will do as well as to bring the books; can you have such a statement prepared? A. I will have a statement prepared of all the payments that we have made to any of the coffee traders; inward trade. I don't know what the payments will be, but you can go through them. It is at your service.

Q. Do your books show, Mr. Daniels, when these pay- 1028
ments are made, what they are for? A. I could not answer that without referring to the books, but I think they will show on what authority we paid them. I am sure they will show that.

Q. So that from that you can determine whether they were rebates or not? A. As Mr. Burlingham says all the payments of the character that you have in evidence here, we have paid simply on cable order, or on written order, out of the funds we had in hand from other accounts.

Q. Can you, in making up that statement, bring the letters or cablegrams authorizing you to make the payments?

1029 A. We will try to. You must recollect in our office our books only run back a year behind our present year. Everything is stored and packed away.

Q. Well, if you have got them you will bring them, won't you? A. Yes, I know Mr. Burlingham has the originals because he has produced them before.

MR. MONTGOMERY: Paragraph forty-seven of the subpoena I see calls upon you to produce the cablegrams and letters and so forth authorizing these payments; you have not brought any?

1030 MR. BURLINGHAM: Those will be covered by the previous one.

MR. MONTGOMERY: You have not got them here now?

MR. BURLINGHAM: No.

MR. MONTGOMERY: Paragraph forty-eight of the subpoena calls upon you to produce receipts from Hard & Rand for these rebate payments. I think that would be covered by the general——

MR. BURLINGHAM: Are you not painting a lily--

1031 has not that been proven?

MR. MONTGOMERY: That is what I say; I think that would be covered by the general proposition.

By Mr. Baldwin:

Q. Mr. Daniels, the firm of Busk & Daniels was the successor of the firm of Busk & Jevons, was it not? A. Yes, sir.

Q. Were you connected with the former firm as partner? A. Yes, sir.

1032 Q. Then the present firm and its predecessors have been the agents of the Lamport & Holt Line for the purpose of securing freight and passengers for a great number of years, have they not? A. Yes, sir.

Q. And they have been the exclusive agents for such purpose in New York, for the period of the life of that partnership either in the first form or the second? A. Practically, yes, sir.

Q. Now, the Lamport & Holt Line ran and run two classes of vessels, do they not, freight and passenger? A. We run those two classes.

Q. Do you run any other class? A. It depends how big a

classification you make, whether you make a fast freight 1033
boat and slow boat.

Q. Do not the general classes I have designated comprise the classes of those boats? A. Yes, sir.

Q. Now, how many boats has the Lamport & Holt Line been operating between New York and the Brazilian ports, and returning during the period, we will say, from 1907 to the present time? A. We have, roughly, operated boats that we call exclusive boats between the New York and the South American Service.

Q. We will come to the differences afterwards—how 1034
many boats? A. Our total fleet will amount to between fifty and sixty. That does not apply only between New York——

Q. How many boats out of the total fifty in that period have you been operating exclusively in the Brazilian trade with the United States? A. I think it is six.

Q. And what are their names? A. *Byron, Tennyson, Voltaire, Verde, Vasari.* We had the *Velasco.* She was lost and we recently added the *Vestris* to the trade, also the *Vandyke*—that makes seven. 1035

By Mr. Montgomery:

Q. Including the one that was lost? A. No, sir.

By Mr. Baldwin:

Q. Now, which of those boats are what you call freight boats? A. Those are all freight and passenger and mail boats.

Q. Now, give us just as nearly as you can and roughly, because you probably cannot give it exact, the tonnage of these respective boats? A. You mean the Lloyd registered 1036
tonnage, or what we call the cargo tonnage. We speak of the *Byron* and *Tennyson* as 5000 base, and the "*V*" boats as eleven or twelve.

MR. BURLINGHAM: Is that the capacity or registry?

THE WITNESS: Capacity.

Q. Are you speaking now of the cargo capacity or are you speaking of the total tonnage of the boats? A. We are speaking of what we call the dead weight capacity.

1037 Q. Speaking of the Lloyd's tonnage, what are they? A. The *Byron* and *Tennyson*, in the neighborhood of (the net tonnage) between two and three thousand, and the "*V*" boats between five and eight, I think.

Q. Approximately? A. Yes.

Q. What is the distinction between the Lloyd and the cargo tonnage? A. The Lloyd is on the basis of measurement and displacement—builder's measurement, and displacement and the cargo tonnage is considered the dead weight capacity or cubic capacity of the boats.

1038 Q. The Lloyds covers its capacity, the cargo tonnage involves its capacity to carry freight? A. Yes, sir.

Q. Now, is there any difference between the time that it takes these boats to go from here to Rio? A. They run to Rio on a seventeen day schedule, all of them.

Q. And they all make it? A. They all make it.

Q. And what are they able to accomplish on the return trip? A. They come back on practically the same schedule.

Q. Seventeen days? A. Yes.

1039 Q. How frequent are the sailings? A. Every other Saturday.

Q. From New York? A. Yes.

Q. And from Rio? A. Fortnightly.

Q. Do I understand that you have a weekly service out of New York for both freight and passengers? A. Fortnightly.

Q. And you have the same service back? A. We have the same service back.

Q. On the regular boats? A. Passenger boats, yes.

Q. Now, do you run any other boats that are not sched-

1040 uled for specific dates, just as you have mentioned? A. Yes, we run as large a fleet as the trade requires.

Q. Well, take an average, how many boats per year in addition to your regular listed fortnightly boats, does the Lamport & Holt Line run between American ports and the Brazilian ports, more particularly New York and Rio? A. From New York we run very few besides, only an occasional boat.

Q. Well, how many would that average during the year? A. Some years none at all—other years——

Q. In 1912 how many did you run? A. I should have to look it up, whether we had any at all.

Q. Well, I don't—it is not my purpose to hold you 1041
down. A. It is only one or two.

Q. They were boats that were put on for special purposes? A. To meet requirements of the trade.

Q. In other words, you had more tonnage out than the regular sailings would accomodate and you then put on the extra boat? A. That is the idea, yes.

Q. Now, who fixes the schedule for the sailings of the Lamport & Holt Line? A. The home office.

Q. In Liverpool? A. In Liverpool.

Q. Who arranges for the extra boats to accommodate 1042
extra tonnage which may be required? A. The home office, in consultation with New York.

Q. Upon advice from your firm? A. Presumably.

Q. Based upon contracts either made or about to be made for tonnage that you cannot accommodate on your regular boats, is that right? A. Presumably.

Q. In other words, when the course of business is such that you find that your commitments in advance to shippers for space cannot be accommodated on the regular fortnightly boats, you then communicate with Liverpool 1043
that fact, and they then arrange for an extra boat to come over here from some place; is that right? A. That is right.

Q. Now, all of the boats of the Lamport & Holt Line that were engaged in this service are publicly advertised, are they not, and the time of their sailing, as a rule? A. Yes, sir.

Q. And your firm provides for that? A. We advertise the boats, yes, sir.

Q. In the daily papers? A. Yes, sir.

Q. You have continuous advertisements in the daily 1044
papers of your schedules? A. Yes. sir.

Q. Now, is the tonnage also advertised of the boats? A. Sometimes, and sometimes not.

Q. It is the purpose of your firm, representing the Lamport & Holt Line to keep the public informed of the sailings of the Lamport & Holt boats, the place from which they all depart, and the capacity that is open to shippers; is that right? A. Well, we do not keep the public informed on anything in connection with capacity, no. Our passenger trade is advertised to solicit passengers, and freight, and we don't advertise. Our trade advertising

1045 is limited to the Journal of Commerce, which is simply a convenience amongst the shippers to ascertain the name of the boat, and so forth.

Q. And don't you in any of your advertisements state what the capacity of the boat is for freight? A. Not to my knowledge.

Q. Do you not in any of your advertisements state what the capacity is for passenger service? A. Only in our booklets or passenger literature. We state the number of passengers that the boat will carry.

1046 Q. Then in addition to your advertisements in the papers you circulate a pamphlet, or booklet, that gives the particulars of these ships? A. As regards passengers?

Q. Yes? A. They are not as complete as you would indicate. We generally advertise the best boat and don't say much about the others.

Q. Now, do you accept freight from any person that offers it, to the ports at which these boats touch? A. If we have room, and want the freight.

Q. That is to say, that if you have not made other time contracts or commitments in advance, so that the cargo

1047 space of these ships is entirely taken, then you will take freight from anybody that offers it, provided that they are willing to pay your tariff? A. Willing to pay our asking terms.

Q. That is your tariff, is it not? A. No, not necessarily.

Q. Is there a distinction between your published tariffs of freight if there are such, and your asking tems? A. Not any distinction, except in loading the steamer, we try, of course, to make as just an assortment of cargo, and as large an earning as possible.

1048 Q. There is some distinction, is there not? A. There is a very great distinction in bookings.

Q. Now, who determines and fixes the price that your firm has to charge, for merchandise to be shipped on the Lamport & Holt Line from here to any of the Brazilian ports or any other ports? A. The Brazilian rates are different with the exception of a few staple articles.

Q. My question is who fixes them? A. Unless you specify your question it is a very difficult one to answer. Too many people have a finger in the pie.

Q. Who fixes the rates for the Lamport & Holt Line, to be charged by the Lamport & Holt Line for the merchan-

dise of any person that ships on that line? A. In the 1049
broad sense the base rates are supplied by the Lamport & Holt at Liverpool; the actual quotations to the merchants themselves are made by some representative in our office.

Q. In other words, Mr. Daniels, the Lamport & Holt Line provide you, as their agent, with a minimum rate to be charged; is that right, which you call the base charge? A. We, under instructions———

Q. Can that question be answered yes or no? A. Yes, I presume it can be answered in the affirmative.

Q. Then they do? A. Yes. 1050

Q. You then have furnished to you this minimum rate, and it is left to your discretion to get a better rate if you can from the shippers; is that right? A. I couldn't answer that in the affirmative; it is not true.

Q. Then you have no discretion whatsoever in fixing the rate? A. If we find that conditions warrant it, or that our tonnage was taken up, we would not hesitate to advance the rate.

Q. Then you have a discretion under certain circumstances? A. Under certain circumstances, put it that way; under certain circumstances. 1051

Q. But you have no discretion at all to change the minimum rate after you have fixed upon that price? A. No, I should say not; we have no discretion.

Q. If a contingency should arise where you thought that a change in the minimum rate might be justified in some way you would get instructions from your principal, wouldn't you? A. We would get in touch with them at once, of course.

Q. Now, you say that the minimum rate is fixed by the Lamport & Holt Line; as a matter of fact, this minimum 1052
rate is fixed by the Lamport & Holt Line in conference with other lines that run on the same trade; is that right? A. I should say presumably.

Q. You know it to be so, don't you? A. I cannot speak for the other side, but I take it for granted that it is so.

Q. You have got a pretty active and pretty general knowledge of the way that the Lamport & Holt Line conducts its business with reference to the Brazilian trade, have you not? A. Yes.

Q. So that when you say "presumably" you have no doubt about it? A. I personally have no doubt, no.

1053 Q. The Lamport & Holt Line maintains a business of charging the shipper, and collecting from the shipper, for the carrying of the shipper's commodity to the Brazilian ports, and return? A. Yes.

Q. In other words, they have been operating this business, soliciting the patronage of the public, both passenger and freight, for hire? A. For compensation, yes, sir.

Q. You understand that hire means compensation, don't you? A. There might be a difference, but I prefer compensation.

1054 Q. For compensation? A. Yes. sir.

Q. Now, does the Lamport & Holt Line offer same rates to all shippers or possible shippers in the United States; that is to say, a uniform rate to all? A. A uniform rate to all.

Q. And that applies without any exception? A. Without any exception, providing accommodations are similar.

Q. Well, then the question of whether or not there is uniformity of rates available to the public, depends upon some condition which the Lamport & Holt Line imposes? A. No.

1055 Q. What do you mean—what did you mean a moment ago when you said if they were all in the same condition? A. I mean that an entire shipment or, a man might come in and make a proposition for a contract. There would be the same rate made for the single shipment for everybody who have complied with the conditions given him.

Q. We are getting right to the point. You make a different rate then to those that make what is known as a time contract; than you would to the person who makes just an ordinary single shipment? A. I don't understand

1056 what you mean by "time contract."

Q. What are the conditions that you spoke of a moment ago which you had in your mind where they would get a different rate? A. A proposition might come in for a thousand tons of cargo to go forward on half a dozen boats, and that contract might be classed on that basis. There might be a slight concession under the tariff.

Q. I don't think perhaps you quite understand my point. If a shipper offers a single shipment, in no instance would you give him less than a minimum tariff rate, would you? A. No, sir.

Q. If, however, he made a contract with the Lamport &

Holt Line to ship a large amount, but which would not be 1057
shipped all at once, you would make a contract with him to ship at such times as he may designate, or you can take, and under those circumstances you would give him the benefit of a lesser rate than the tariff? A. Not necessarily less than the tariff, but we would consider that special arrangement.

Q. Don't you frequently make contracts for three months ahead? A. Yes, but we have been getting full tariff rates on these contracts, lately.

Q. Did you notice that I did not say anything about 1058
lately? A. Yes.

Q. Make it as responsive as possible? A. Past conditions have been otherwise.

Q. There are instances since 1908 where you have made time contracts—you understand time contracts? A. You mean a specific contract covering time.

Q. Certainly? A. We have been making them whenever the opportunity presents itself.

Q. Since 1908 you have been making them from time to time? A. Yes, sir.

Q. Then, whether or not the shipper under those conditions would—making what I call time contracts, would get the benefit of a rate less than a minimum tariff rate would depend upon the amount of the shipment, would it not? A. No, I doubt if he could get a minimum tariff—that is a peculiar word.

Q. Very plain to most of us. Well, a minimum rate established by your principal. When I say "minimum tariff" I will always refer to the minimum tariff over which you have no discretion? A. I would not say we did not have discretion over the minimum tariff. We have 1060
not over the minimum rate we are given to operate on the ships, and the minimum tariff is another proposition entirely.

Q. I understood you to say a moment ago that your principals, the Lamport & Holt Line, gave you a minimum rate? A. Very often through the conference, gave us a minimum rate.

Q. Do you now desire to change the testimony as you gave it a moment ago, to say that they only frequently gave you a minimum rate, or had they always given you

1061 the minimum rate—which is it? A. More often frequently given us.

Q. Doesn't the Lamport & Holt Line furnish you with a rate below which you cannot go without their permission? A. They have in the past, and as a rule.

Q. Now, when I refer to minimum rates, just bear in mind that that is, at least, what I mean? A. I want to correct you again, because we are not——

Q. Don't correct me, correct yourself. A. That does not apply to minimum tariff. It only applies to minimum

1062 base.

Q. There is something else that enters into this fixing rates that I didn't comprehend? A. The tariff, different classification, a wide difference in rates, according to class of goods.

Q. You make up, do you not, a list of the commodities that make up the shipments from New York to Brazil? A. Yes, sir.

Q. And they are specified? A. Yes, sir.

Q. Take for instance, steel rails, as a sample, who fixes the minimum rate that you charge for the carrying of steel

1063 rails? A. Quoted in there. (Referring to book.) From the other side. They are not a tariff article.

Q. Not scheduled at all? A. No.

Q. You have what you call a printed tariff? A. Yes.

Q. Who gets it up? A. I should say the secretary of the conference.

Q. The New York conference? A. The original of that is gotten up in Europe.

Q. I am speaking generally about this tariff? A. That is only a copy. The man who gets that up, gets it up on

1064 the other side.

Q. You usually operate under a specific printed tariff? A. Yes.

Q. Setting forth the minimum rate which you as an agent of the Lamport & Holt Line are expected to exact from the shippers; is that right? A. Yes, sir.

MR. BURLINGHAM: It is a bad word, "exact."

MR. BALDWIN: I know you don't like it, but we love it.

THE WITNESS: Make it "subtract."

By Mr. Baldwin: 1065

Q. Now, that printed tariff is gotten up in London at the London conference? A. The New York one is a copy of the London one.

Q. I am not speaking about copy; I am speaking about the fact of making up a tariff that is printed? A. The detail of that American tariff——

Q. I have not asked you anything about the American tariff—I am asking the question of who makes up the tariff? A. I should say it was made up abroad.

Q. Now, where abroad; by the London conference? A. 1066
I could not tell you that; I could not answer.

Q. Now, I show you Exhibit 3 for identification; is that a tariff that is furnished—a printed tariff that is furnished you by your principals? A. The printing is done here. The arrangement is made here, but the base of the tariff is furnished abroad.

Q. The actual printing of this Exhibit 3 for Identification is done in New York? A. Yes, and the adaptation to American money is done in New York.

Q. This particular exhibit, regardless of the designa- 1067
tion of the form of money, is done here in New York? A. Yes, sir.

Q. And who does it here in New York? A. It is made up in conference of the secretary and others of the line.

Q. You mean a conference held in New York of all these conference lines; that is to say, the lines defendants in this suit? A. Yes, sir.

Q. You say that the conference here prints and did print this particular exhibit. Now, the information—that is to say, these prices that go into this tariff, are furnished by the London conference; is that right? A. They are the 1068
equivalent of the London conference rate. The actual figures are not furnished by the London conference.

Q. Well, we will go a little further. In order to make up this exhibit what did you and your conferees do here to make it up? A. We take the English tariffs which are similar classifications and we take the equivalent of the rates in American money that were in those tariffs abroad.

Q. I don't quite understand what you mean by the English tariffs; will you explain that? A. In England and Germany they have a similar classification to this. Of course, their rates are in pounds sterling, or marks, etcetera.

1069 Q. That is to say, the Lamport & Holt Line, the Prince Line, and the German lines, parties defendant in this action— they have a tariff which is similar to this, excepting that you change the money designation into American money designation? A. Practically.

Q. Joined with these conferees were there any other lines that had the same rate? A. Do you mean in America or abroad?

Q. No, abroad? A. I think there were a great many others.

1070 Q. For instance, the North German Lloyd and the Royal Mail Steamship Company? A. I presume so, although I cannot answer of my own knowledge.

Q. Who furnished you or this conference here with the rates that obtain abroad and to the Brazilian or South American trade? A. I think those rates were taken from a copy of the German tariff furnished by the Hamburg-American Line.

Q. Do you mean the Hamburg-American Line, one of the defendants in this suit? A. Yes, sir.

1071 Q. Well, you had some instructions, did you not, from your principals to make up your tariff on that basis? A. We were told to make our tariff up on the same basis as their tariffs from the other side.

Q. And each one of the conferees here in New York at your New York conference operated under like instructions in making up this tariff with you? A. I presume so.

Q. Well, while no tariff in any pamphlet form or otherwise was made up by any of the defendants, these defendant lines just made a general tariff that applied to all? A. I think so, yes.

1072 Q. Is this printed tariff of which Exhibit 3 for Identification is a copy disseminated among the shippers here? A. No.

Q. It is simply kept by each one of the agents of these conferee lines? A. Yes.

Q. So that if a shipper desires to engage space and make a shipment on, we will say by the Lamport & Holt Line, you take this tariff and turn to the commodity which he wishes to ship, and then make an arrangement with him based upon that tariff, as appears in this printed tariff? A. That is about the procedure, yes.

Q. Did the tariffs change from year to year? A. They are constantly changing.

Q. Whenever the German tariff that had been sent to 1073
you or to these conference lines here would show that there was any change in rates, then you would ask your New York conference to make a change in the tariff, the printed tariff, to correspond? A. That is the procedure.

Q. And were those changes frequent? A. They are constant, yes.

Q. So that it required a reprint of these tariffs frequently? A. Yes.

Q. The expense of the printing of the rates for the bene-
fit of the New York conference was borne generally, I sup- 1074
pose by all? A. I presume so; I don't know, but I should presume so.

Q. Do you know whether or not there has been any tariff issued by these conferees since March, 1912? A. Not to my knowledge; there have been changes made in them.

Q. Then you simply made changes in the one that was then in force? A. Yes.

Q. And each one of the conferee lines would make the same change? A. Yes, sir.

Q. So that a shipper desiring to make a shipment to Bra- 1075
zil of any of the commodities mentioned within this tariff, would have to ship at the rates that are mentioned in there, or not at all? A. You mean over our boats?

Q. Yes? A. Presumably.

Q. He would get the same rate from each one of these conference lines? A. Presumably.

Q. Now, going back a moment to the question of minimum rates, Mr. Daniels, the rate per commodity that is designated in this printed tariff, is a rate below which you, as the agent for the Lamport & Holt Line cannot go with- 1076
out instructions from the other side? A. I should say yes.

Q. Now, are not there a number of articles that are shipped from this country to Brazil that are not included in the German tariffs? A. Yes.

Q. Now, who fixes the rates for those commodities? A. We fix them here.

Q. You in conference with the agents of the defendant conferee lines? A. Practically, yes.

Q. Do you get any instructions about that from your principal? A. Yes, we get a minimum base rate which we are not to go below.

1085 A. Not as a whole. There is one contract, copy of which you have, made by one of the lines. That is only a very small part of the business.

MR. BALDWIN: Read the question.
(Question read.)
THE WITNESS: No.

Q. Is there anything about the oil trade, as to your method of handling or booking or engaging for, that is different from that of any other commodities that are ship-
1086 ped? A. I would not say so.

Q. Is there any oil shipper whose business for some reason or another, is handled in any different way than the general line of your business? A. No, sir.

Q. Referring again to Exhibit 3 for identification, with the exception of certain modifications made from time to time, we will say on specific articles, the rates as appear herein specifically, are the rates that are now in force? A. I could not answer without looking at the paper, and I don't believe even then—I will have to get advice, but I
1087 think all of these rates have been advanced. I think all of them have been advanced.

Q. Mr. Daniels, as a matter of fact, I understand there is evidence already in the case by Mr. Sparks to the effect that there is a new tariff that was in course of printing some weeks ago—do you know anything about it? A. Nothing except these are constantly being reprinted as soon as they get mutilated.

Q. Reprinted because of a change of the rates? A. Yes.

Q. Do you know whether or not that has yet been printed?
1088 A. I could not answer but I will look when I get back. I am quite sure there is no other tariff printed. There is no new one now.

Q. Now, I understand then from your testimony, concerning the source from which you make up the printed tariff, of which Exhibit 3 is an exemplar, that all of the goods or commodities mentioned in this tariff are goods which are in competition with goods that go from the United States? A. Not all, but a great many.

Q. A great many of them? A. Yes.

Q. Now, in arranging for the tariff is there any difference of method or any difference in price applying to

goods that are not in competition with the foreign countries 1089
to Brazil—I mean European countries to Brazil and those that are? A. No. Articles in there that are in competition are the same, and there are a great many articles in there that are not shipped from here, and a great many articles shipped from here that are not shipped from abroad.

Q. Is the rate based upon any difference—different foundation as applying to the goods exclusively from the United States than to those which are not exclusively shipped from the United States but also go from Europe to Brazil? A. No, the goods that go from the United States are generally 1090
a rough class of goods, that take the lowest basis of freight.

Q. But don't steel rails go from Europe to Brazil? A. They go from Europe and the United States.

Q. They are competitive? A. Yes.

Q. Kerosene is a competitive article? A. No, and it goes at a base rate—very cheap rate.

Q. What other articles are in competition? A. Ninety per cent. of the book.

Q. What articles have you in mind that are not competitive besides those you mention? A. Flour, lumber, 1091
rosin and its products, turpentine, and some provisions. They go in rather small quantities now, though. I think that would cover the list.

Q. Now, the carrying charges for those non-competitive articles that you have mentioned—is the basis upon which the charge is made any different than that of the basis for making up charge on competitive articles? A. Not at all.

Q. Take steel rails, for instance; would the New York conference rate for steel rails be the same as the German or English rates? A. Yes.

Q. You are quite sure of that, Mr. Daniels? A. Quite 1092
sure—at least I am told so, and I have reason to believe so.

Q. Now, Mr. Daniels, I call attention to exhibit 1 of the petition or bill in this case on page 22, how many sailings do the Lamport & Holt Line maintain for a year from New York to the coffee ports? A. We have one every fortnight.

Q. And you have how many boats? A. There are twenty-six passenger sailings from New York south and occasionally a freight steamer.

Q. And on your regular schedule, how many sailings do

1093 you have per year? A. One every fortnight—one every two weeks.

Q. That would be twenty-four sailings? A. Make it twenty-six.

Q. Now, Exhibit 1 provides that the Lamport & Holt Line should have twenty-four sailings per annum—that part then of what is known as the traffic agreement has been modified so that you regularly send more than the twenty-four mentioned therein? A. I cannot discuss that; I know nothing about it.

1094 Q. Don't know anything about that subject? A. No, sir—to the best of my knowledge as I have always testified it does not operate, or whatever you call it.

Q. Who is the managing director or the chief man of the Lamport & Holt Line in Liverpool? A. The managing directors of the line are Mr. Arthur Cook and Mr. George Melly.

Q. You know those two men pesonally, I suppose? A. Yes, sir.

Q. And they have been the managing directors of the
1095 Lamport & Holt Line for a long period of time? A. Managing directors for a year and a half.

MR. BURLINGHAM: It was a firm before.

By MR. MONTGOMERY:

Q. Before that it was a partnership? A. Yes.

Q. And they were practically the managing partners before that, were they not? A. They had a great deal to do with the management, yes.

Q. Well, I suppose you have been in conference with
1096 them frequently? A. I have seen them occasionally.

Q. And talked with them about the business of the Lamport & Holt Line contracted in New York? A. Occasionally.

Q. How frequently? A. I have not seen them for a year and a half.

Q. In constant communication with them? A. Yes, sir.

Q. And had conferences with them before February 14, 1908? A. Presumably.

Q. In any business correspondence with them concerning the affairs of the Lamport & Holt Line and this business frequently before that? A. Naturally.

Q. You knew, didn't you, that at or about the 14th of

February, 1908, that the Lamport & Holt Line and the 1097
Brazil Line, and the German lines, defendants, were having meetings and conferences for the purpose of arranging, or making some arrangement, concerning this Brazil business? A. We were so advised, yes.

Q. You had more or less correspondence with them yourself about it, didn't you? A. I presume so, but I don't recall.

Q. Up to this date of the 14th of February, 1908, you were not holding a New York conference here, were you with these lines? A. Previous to that date? 1098

Q. Yes? A. Not immediately previous, no.

Q. Not for a year or more? A. Something like that.

Q. You, up to that time, were operating the business of the Lamport & Holt Line without any reference to the business of any other line? A. Presumably, yes.

Q. And up until the date of that agreement at least, you were not making any arrangements with the agent of any other conference line, parties defendant for any uniformity of rates or fixing the number of sailings of your respective boats, were you? A. We were not in conference with them at all. 1099

RECESS TAKEN UNTIL TWO O'CLOCK P. M.

AFTERNOON SESSION.

LORENZO DANIELS recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Now, Mr. Daniels, to depart from the line of questions that I have just been propounding to you, I want to revert back again to the question of the printed tariff. I show 1100
you what purports to be a printed tariff of the rates of freight from the United Kingdom ports and Continental ports, from Hamburg to, among other ports, Victoria, Rio and Santos, and ask you if that is a German tariff of March 1912, or a copy of the German tariff, that you referred to when you said that the printed tariffs made up by the New York conference are based upon? A. If that is the tariff that the Hamburg Line used—it is apparently correct.

Q. The book produced by Mr. Gottheil? A. I accept it as correct.

1101 Q. Is that the copy of the German tariff that you used? A. Yes.

Q. I ask that that be marked for identification.

Marked Petitioner's Exhibit No. 158 for identification.

Q. Now, who were the representatives in the New York conference when the tariffs that you have identified, and testified about were made, of the Brazilian and German lines parties defendant? A. I could not answer personally
1102 —who have come to the conferenee as representing those lines.

Q. Did not you attend the conferences yourself from time to time? A. I have not attended for some little time, no.

Q. Did you attend at all during 1912? A. I don't think I have been there for a year, no.

Q. You were there in 1911, then? A. Yes, quite likely.

Q. Frequently? A. I think so.

Q. Who were the representatives at that conference as
1103 you recollect them? A. You mean personally.

Q. Yes, give us the names? A. Mr. Paul F. Gerhard.

Q. Representing whom? A. The Prince Line.

Q. Who else? A. Mr. Charles Gerhard.

Q. Representing the same line? A. Same line. Mr. Connor representing the same line, and I am not sure whether they have had a fourth representative, at times.

Q. Give us the Hamburg Line? A. Mr. Gottheil has been present, Mr. Sparks, Mr. Betts—I think one or two others of their staff. I don't recall their names. Mr. Garvan
1104 was there; one or two representatives at different times who have happened to come, representing the lines.

Q. Do you know whether or not the number of sailings for the Prince Line as provided in Exhibit 1 attached to the bill, to-wit, twenty-four sailings per annum has been maintained? A. I could not give you in detail under this arrangement—I have got no track of it at all.

Q. What is your recollection about that? A. I have never taken the trouble to go into statistics.

Q. You don't know anything about it? A. No, sir.

Q. Do you know whether the Hamburg Lines combined have, since the date of this agreement, February 14, 1908, maintained the twenty-four sailings per annum as provided

in that agreement? A. That, I could not answer; I have 1105
not kept the record at all.

Q. It has been no part of your business or interest, to ascertain whether or not the sailings of the various lines provided for in that agreement have been maintained? A. No, sir.

Q. Have you any general knowledge about it as to whether they have or not? A. There is a record of the actual sailings.

Q. I didn't ask for that; I asked if you had any general knowledge? A. General knowledge, no.

Q. But you do know that the Lamport & Holt Line now 1106
has twenty-six sailings? A. We have a steamer every fortnight.

Q. How many sailings did they have in 1911? A. Again, I could not tell you without referring to the record; we don't keep it at all.

Q. Did you have more in 1912 or 1911? A. Again it didn't interest me to keep the details; I have not got the statistics.

Q. 1908, 1909, 1910, how about that? A. I never kept the statistics. 1107

Q. Will you make a minute so that on an adjourned day, you may be able to state what they are? A. I can give you a record.

MR. BURLINGHAM: From 1908 on—from what date do you want it?

MR. BALDWIN: From 1908 right straight down.

Q. Now, Mr. Daniels, do I understand you to say that you have had no knowledge of this Exhibit 1 having been made by the respective signers thereto, these con- 1108
ference lines? A. I knew they had entered into an agreement; my recollection is that we never saw a copy of it until we saw it in the petition or whatever you call it.

Q. But was it—would it inform you with respect to the number of sailings of the Lamport & Holt Line would make per annum? A. The number of sailings would not interest us here; it is entirely a matter of detail.

Q. Can you state whether or not the sailings since the 14th of February, 1908, since that time for the Lamport & Holt Line were the same as they were before that date? A. That I could not state without looking up.

1109 Q. Look that up, will you please? A. Let me understand exactly what you want me to look up.

Q. Take 1906 and 1907; just get the information on that anyhow? A. I will try to, yes, sir.

Q. Now, immediately preceding the date of this agreement did you have any fixed tariff; minimum tariff, for the Lamport & Holt Line, appertaining to practically the same commodities as mentioned in this tariff, Exhibit 3, for identification? A. How many years back is this?

Q. Immediately preceeding the 14th of February, 1908.
1110 A. It is my recollection that we had a tariff for years preceding that, yes, sir.

Q. And have you got it? A. I don't think I could get a copy of it.

Q. Are you able to state whether or not the rates were the same in 1907 as they were in 1908 preceding the adoption of this agreement? A. The actual rates, I am not able to state; the general policy was the same, of maintaining similar rates.

Q. You say that prior to the 14th of February, 1908, the
1111 policy of your line was to maintain rates based upon the German tariff rate? A. Similar rates to foreign services, yes, sir.

Q. Were the rates that then obtained, with reference to the Lamport & Holt Line, the same as the rates that were maintained by the Prince Line and the Hamburg Lines during that period; generally speaking, do you know whether they were uniform rates, or whether they were not?

MR. BURLINGHAM: The question is prior to this
1112 agreement.

MR. BALDWIN: It is leading up to the making of this agreement.

THE WITNESS: There was an interval of several months, maybe a year, where all the lines were hava rate war—we will say a disagreement, and the rates were any rates anybody would like to make.

Q. Then, for at least a year, we will assume prior to the making of this agreement, these respective conference lines, here in this suit were offering the facilities of their vessels to the shipping public upon rates that were not uniform to all? A. That is my understanding.

Q. That is to say, they were competing for the business 1113
of the shippers, each fixing a satisfactory rate to himself, regardless of the price fixed by others? A. They were far from satisfactory, and far from remunerative.

Q. But whether it was satisfactory or remunerative, there was no concert of rates? A. No.

Q. When you heard that somebody had a prospective shipment you made an offer to get it if you could, and at the lowest possible rate that you could make? A. Presumably that was the procedure.

Q. I mean lowest for the purpose of getting the ship- 1114
ment? A. Yes, sir.

Q. That is, during that period, as a matter of fact, the conference lines—there were really four, but three by combining the German Lines—they were actually competing for the business, weren't they? A. The year previous to June, 1908, yes, sir.

Q. And there was no such a thing as a fixed rate that was a standard? A. That is my recollection.

Q. Now, prior to that time, what you call the rate war, but what I call this period of competition, there had been 1115
some other concert before that, which had been broken, respecting rates, is that right? A. Yes.

Q. And in which these parties then were all involved? A. If I remember correctly.

Q. Were the rates then, that obtained in this interim in which there was competition, were they less than the rates that obtained before under this prior agreement? A. That is my recollection.

Q. How many boats did you maintain, and what were the periodic sailings for the year immediately preceeding the 1116
time of this agreement, Exhibit one? A. I cannot answer that correctly off hand, sir.

Q. Were they as frequent as fortnightly sailings? A. I don't recollect.

Q. What is your general impression about that—you must have some general knowledge as to the age of that line? A. At one time we operated fortnightly, and at one time I think we only operated monthly.

Q. During that period of time, you were advertising your sailings of your boats, just as you have continued to do since that time? A. In a very limited measure.

1117 Q. Did you then advertise in the Journal of Commerce? A. We advertised in the Journal of Commerce.

Q. Did you advertise in the daily papers? A. I do not think that we went beyond the Journal of Commerce to any extent.

Q. How about the passenger steamers—you did advertise passenger steamers? A. Yes.

Q. Was there competition for the passenger service, as well? A. Yes.

Q. Passenger rates? A. Yes, sir.

1118 Q. Do you mean to say that during the period of 1907, or the year preceding this agreement, you did not publish your sailings so that passengers would know about it? A. We published our sailings, but not to the same extent, as we do to-day. We had very limited publication in those days, because the business was limited—very small business.

Q. Well, you must have published to some extent? A. I say, to some extent—to a small extent, yes.

Q. Do you know who were parties to this earlier agree-
1119 ment, preceding 1907 or concert? A. I could not give the information positively.

Q. As best you can? A. As I recollect there were two associated lines in the time previous to this. One was the Sloman Line, and then the Union Line. Each of those went out of business on account of—

Q. I did not ask you what happened to them.

By Mr. Montgomery:

Q. Was the Hamburg Line in that agreement? A. Not to my recollection.

1120

Q. Was the Prince Line in that agreement? A. I think they were.

Q. Now, when was your attention first called to the fact that any tariff rates were agreed on between these lines after this Exhibit 1? A. As I recollect, we were advised, presumably as soon as the agreement was definitely arranged, and if I recollect correctly, the tariff went into effect on the 1st of July following.

Q. Well, if you had never seen this agreement until it was offered as an exhibit in this case, upon what basis did you understand that the conference lines had fixed tariff

rates? A. I suppose we were advised—I don't see any 1121
other way.

Q. By letter? A. I should presume so.

Q. Did you have any letter that particularly gave you the substance or the synopsis of it—of what that agreement contained? A. No, I should not characterize that as at all necessary.

Q. I did not ask what was necessary—I asked whether you were? A. I don't think so, further than that we were to come together on rates operative from the 1st of July.

Q. Were you told to come together on anything besides 1122
rates? A. Not to my recollection.

Q. But you did know in a general way that these defendants theretofore competing, at least for a period of time, had made an arrangement which involved something else than mere rates? A. I told you that I thought we had an abstract of this, covering a portion of it. It is my recollection that it covered three or four paragraphs.

Q. Did that abstract that you had inform you that the Brazil business was to be divided in a way so that certain parts of it would control and direct the outward sailings
from New York to Brazil, and a part, the homeward sail- 1123
ings? A. I don't recall, but I should presume that there would be general information to that effect.

Q. Did you know that it had a provision with reference to operating? A. We received in due course a copy of this exhibit, number two, which is the operative one from New York.

Q. But you did not get any copy of number one upon which number two was based? A. As I recollect, not in its entirety.

Q. Well, you do know, don't you, that immediately after 1124
this agreement number one was made, that the conference lines in the London conference did arrange upon tariff rates from New York to Brazil, which was to control all the lines from here down—parties to it, you knew that, didn't you? A. I think we were told to adopt the tariff—I think that follows.

Q. And to conform to whatever agreement your principals sent you, or informed you in some way that you make a different tariff, based upon the German? A. The English and Continental tariff, yes.

Q. And that they were to be informed as to all of the

1125 other conference lines? A. That was my understanding, yes.

Q. Now, when was your attention first called to the fact that pursuant to Exhibit 1, a deferred rebate system was adopted? A. It never was adopted.

Q. What do you understand by a deferred rebate—rebates to be paid after a given time, based upon shipments for a certain time preceding? A. I should gather in answer to your question that the printed rebate circulars, that you have, covered that in full.

1126 Q. Well, I will come to that—have I not practically stated just what deferred rebating under that agreement—what they were? A. There were not any deferred rebates, or rebates of any kind under exhibit number one.

Q. Are you speaking about the outward? A. I am speaking about the outward, yes, sir.

Q. There has never been any rebates provided for or paid by the conference line operating under exhibit one, or any other agreement from 1908 down to the present time on outward shipments? A. No, sir.

1127 Q. Nor any substitute for that? A. No, sir.

Q. Well, prior to 1907 there were deferred rebates, were there not, in force? A. There were, yes, sir.

Q. Of course, during this competing period—we will say 1907—there were no rebates in which at least the Lamport & Holt Line participated? A. That I cannot say, from the particular date without looking it up.

Q. That is your general impression? A. No, my impression is that there were.

Q. That the Lamport & Holt Line allowed rebates, and paid them during 1907? A. My impression, without look-

1128 ing at the data, is yes.

Q. Did the other lines pay rebates at the same time? A. That is my impression.

Q. Were the rebates contingent upon the shippers agreeing with Lamport & Holt that all of their shipments should be confined to Lamport & Holt? A. No, sir, the rebate was never an agreement—it was always an open offer on the part of the lines for which the merchants had the privilege of qualifying or not, if they liked.

Q. Qualifying in what sense? A. On the terms on which they were offered.

Q. What were the terms? A. The old rate—and they

are all of a similar character. There was simply a published offer by the lines that a ten per cent. return—call it rebate, discount, anything you like—sometimes bonus, sometimes commission would be paid to those merchants who had supported the regular service of the line from a period as stipulated in that printed circular. 1129

Q. Have you got any of those circulars? A. I don't think there is one in existence.

Q. Then there was no provision in this circular or public offer by which these shippers' right to rebate was dependent upon their confining their shipments to the Lamport & Holt Line, and the competing lines, were there. 1130

MR. BURLINGHAM: Mr. Baldwin, what is the materiality or relevancy as to the rebate system outwards prior to the agreement in suit, not referred to at all in the petition, and it seems to me has nothing to do with it.

MR. BALDWIN: Do you object to it?

MR. BURLINGHAM: Yes, we must draw the line somewhere.

MR. BALDWIN: Well, I have a right to go into the genesis. 1131

MR. BURLINGHAM: You don't complain that there is any rebate system outward. There has none been proved and none alleged, and the time in regard to which you are enquiring related to a time prior to the agreement in suit.

MR. BALDWIN: I am trying to show the genesis; the history of the trade that led up to the making of the rebates outward.

MR. BURLINGHAM: It is a genesis without result.

MR. BALDWIN: I can show the potentiality, as well as the result—I say it is material. 1132

MR. BURLINGHAM: I object on the ground that it is immaterial and irrelevant; I object on the grounds stated, that the enquiry is in regard to matters that have no relevancy and no materiality; moreover on the ground that it calls for evidence with regard to some written or printed or published document which is not before, and that the date is by no means fixed with any degree of definiteness—whether it was in 1907 or prior thereto.

THE WITNESS: Is that the interim in 1907?

1133 MR. BALDWIN: Yes.

THE WITNESS: I don't recollect that definitely without referring——

By Mr. Baldwin:

Q. As a matter of fact the rebates that the Lamport & Holt Line offered only required that they should practically confine their shipments to the Lamport & Holt Line? A. I think, Mr. Baldwin, that the rebates were abandoned entirely during that time.

1134 Q. During the interim—just before this agreement was made—there were no rebates, were there; is not that the fact? A. I cannot answer that off-hand; my recollection is that they were abandoned at that time.

Q. So that if you have said anything prior to that, you want to change it? A. No, I think earlier in the year there were. If you have any data to refresh my memory, I would be very glad to come to the point.

Q. Now, have you any information that subsequent to the making of the agreement, Exhibit one, what sailings the Lamport & Holt Line were allowed from the Brazilian
1135 ports to New York? A. I think we had as many sailings as we liked.

Q. Since this agreement? A. Since this date, from Brazil?

Q. Yes? A. Well, I think I can turn best to the agreement itself.

Q. I am asking you whether or not the Lamport & Holt Line's number of sailings from Brazil to New York was in any way limited? A. My understanding is that it never has been.

1136 Q. Was it limited by any prior agreement? A. You mean in any prior agreement?

Q. Yes? A. I don't think so.

Q. Then, since this agreement the Lamport & Holt Line was at liberty to despatch such number of steamers as may suit their convenience, from Brazilian ports to New York? A. That is my general understanding.

Q. Your understanding is that it was in pursuance of that agreement? A. Anybody that has liberty of action—it is not by agreement.

Q. Do you know whether or not the Hamburg Lines from Brazil ports were limited to twenty-four steamers per annum since that agreement? A. I know nothing definite.

Q. You know generally? A. Except what I see here. 1137

Q. Was it not your understanding that they should have twenty-four? A. I never talked about it.

Q. Have you any information on the subject by which you can answer yes or no? A. No, I have no general information.

Q. No talks with your conference? A. We didn't discuss it in New York.

Q. Did you ever see the published sailings of the Hamburg Line? A. Yes, sir, naturally.

Q. From the Brazil ports to New York? A. Yes, we saw 1138 them.

Q. Did those published sailings in any way refresh your recollection? A. No, I never was interested in it at all.

Q. You don't know how many they did run to New Orleans? A. No, sir; not to my actual knowledge.

Q. Did the Hamburg Lines prior to this agreement have any service to New Orleans? A. I should answer that, no.

Q. Didn't have any prior to that? A. No service, no.

Q. I call your attention to the end of paragraph four of this agreement which—with respect to the withdrawal of 1139 the Hamburg Line's service to New Orleans—you see that don't you? Does that in any way refresh your memory so that you can state with any certainty that they did have? A. My recollection in general is that during that period of rate war the Hamburg Line loaded one or two steamers to New Orleans—it was what you might call fighting steamers.

Q. And it was pursuant to this agreement that the Hamburg Line withdrew that service? A. I don't know, at all.

Q. The agreement did not interest you at all, although 1140 you were the agents in New York for the Lamport & Holt Line? A. This was something that was going on in Brazil, and did not interest. We ran also a line ourselves to Hamburg from Brazil, and that was also fighting boats.

Q. As against the Hamburg? A. Yes, sir.

Q. Now, there have been occasions when your firm has paid to certain shippers here in New York rebates which they claimed upon coffee shipped to New York and New Orleans from the coffee ports in Brazil? A. If we have made such payments, it has simply been——

Q. I did not ask you for an explanation. There have

1141 been times when you have made those payments? A. Not ourselves; we may have paid out money belonging to somebody else. We never paid them ourselves as agents of the line.

Q. Well, do you recollect, whether it was your money or somebody else's money, that Busk & Daniels were the active payers of money to any shippers here in New York or New Orleans for claimed rebates for coffee shipped from the coffee ports in Brazil to New York or New Orleans? A. There are no coffee shippers at this end of the line—the
1142 coffee shippers are at the other end of the line.

Q. Hard & Rand are shippers of coffee? A. Yes—Hard, Rand & Company.

Q. You know that Hard & Rand and Hard, Rand & Company are the same? A. Practically; I don't know of my own knowledge; I can easily presume it.

Q. You have paid Hard & Rand rebates in New York? A. We have paid Hard & Rand sums of money that apparently have been applied to rebates presented to them in Brazil or by their London house in Europe. I don't
1143 know in detail about it at all.

Q. Do your books show the conditions, and for what purposes and pursuant to what, payments for rebate to Hard & Rand, were made by Busk & Jevons? A. I will bring you the abstract of the books.

Q. That is not what I am asking about, bringing abstracts? A. Personally, I don't know.

Q. Never looked at your books? A. Personally I don't know anything about it.

Q. But who connected with Busk & Daniels would know
1144 just what your books show, and could testify? A. As soon as I can post myself, I would be able to.

Q. You will look that up, will you? A. Yes.

Q. Are you quite sure, Mr. Daniels, that the first time that you ever saw a copy of Exhibit 1, attached to the bill in this suit, was when you saw it in the bill itself—I am not speaking about the synopsis? A. The document as an entirety; my recollection is that the first time I saw it was here.

Q. You were before the Grand Jury at one time, were you not, in some proceeding conducted by the United States in this district? A. Yes.

Q. That has been how long ago? A. Two years ago—or a 1145
year ago.

Q. Did you not have a copy of it? A. No, sir.

Q. Did you not, as a matter of fact, produce or personally deliver to the District Attorney a copy? A. My recollection is that it was only the abstract.

Q. Do you say "abstract" in the sense that it only contained a few of the provisions? A. Only contained a few of the clauses.

Q. No exact copy or what purported to be? A. No copy.

Q. You have some recollection of having been asked to 1146
produce it, haven't you?

MR. BURLINGHAM: Where? There?

MR. BALDWIN: Yes.

THE WITNESS: We were asked to produce it—as I saw the Hamburg Line had produced this copy here, we did not produce it—one copy produced, we thought answered the purpose.

Q. If you thought one copy was produced, and that an- 1147
swered the purpose, then you must have seen it at that
time?

MR. BURLINGHAM: I don't think that follows—you are cross-examining him.

MR. BALDWIN: I have a right to cross-examine him. He is one of the defendants.

THE WITNESS: If my recollection is correct, that was the information that we had.

Q. I have here Exhibit 38 for identification, which is a 1148
letter of the 19th of February, 1908, and you will notice
under the heading "Brazil Conference," that you speak of
a cable that you had received; have you got that cable?

MR. BURLINGHAM: We have not been asked to produce that cable, have we, Mr. Montgomery?

MR. MONTGOMERY: I don't think it has been subpoenaed.

MR. BALDWIN: Will you make a note of it—you can give it to Mr. Burlingham, Jr.

MR. BURLINGHAM: He speaks of the traffic agreement; he evidently means the pool.

1149 THE WITNESS: A cable would only give the outline.
MR. BALDWIN: Well, I want the cable.

Q. Now, do you know whether or not pursuant to this Exhibit 1 the conference lines used arbitrators for the purpose of deciding differences between the parties thereto growing out of the agreement? A. I do not.

Q. What time was the office established here in New York, Mr. Daniels, at which you held your New York conferences? A. It was established a good many years prior
1150 to this date.

Q. Then, during 1907, using that as a type, you did not have any conferences at all? A. We had no conferences.

Q. In other words it has been abandoned? A. Yes, sir.

Q. And after this agreement was confirmed, you re-established it here in New York? A. Yes, sir.

Q. And where is that office where you have been holding your meetings? A. In the Produce Exchange Building.

Q. And you hold your meetings how often? A. The regular meetings are held once a week—I think on Wednesday
1151 morning.

Q. Who pays for the maintenance of the office? A. That is divided by the three lines.

Q. And the cost of maintaining the conferences outside of the rental is also jointly maintained? A. Also jointly maintained.

Q. Now, Mr. Daniels, this morning I asked you with reference to time contracts, you stated as I understand it that if the shipper complied with certain conditions you would be authorized to make a less rate than what I call the mini-
1152 mum and you call the base rate—you remember that, don't you? A. Yes, sir.

Q. You know the Singer Sewing Machine Company, don't you? A. Yes, sir.

Q. They are large shippers, are they not, from this port to Brazil? A. Yes, sir.

Q. I show you what purports to be a copy of a contract dated the 12th day of December, 1908, Exhibit 100 for identification—is that a copy of a contract that was entered into between the Singer Sewing Machine Company and Busk & Daniels, as agent for the Lamport & Holt Line? A. Apparently.

MR. BALDWIN: I offer this in evidence, Mr. Bur- 1153
lingham. (Handing letter to Mr. Burlingham.) Read the other side as I will offer that too.

MR. BURLINGHAM: Mr. Burlingham stipulates that it is a copy.

Marked Petitioner's Exhibit No. 100.

Q. This purports to be signed by G. M. Hughes; who was he? A. He was a man authorized to sign for the Singer traffic.

Q. For the Singer Sewing Machine Company? A. Traf- 1154
fic, yes.

Q. I notice that you say here, "It is agreed that all shipments from New York to Rio, Santos, Brazil, from the 1st of January to the 31st of December, 1909, will be shipped by the Lamport & Holt Mail Steamers at sixteen cents per cubic foot plus ten percent primage. Now, was that sixteen cents a regular rate, or was it a modification of your regular rate? A. I could not tell you without referring to the rates at the time.

Q. Can you look at your schedule? A. You have not got 1155
a schedule of that date.

Q. This is one of March, 1908.

MR. BURLINGHAM: No, there is two years' difference.

Q. Well, in as much as this provides for a period of time for a year practically, and the rate is sixteen cents per cubic foot—does not that in any way refresh your recollection as to whether it was or was not below the rate offered to others generally? A. I cannot answer you generally with- 1156
out the data, but presumably the rate is slightly lower than the open rate at the time, but is the same rate that they would give anyone else who wanted a similar contract.

Q. How much lower was it—have you any idea? A. I have no idea; it would be a very slight concession.

Q. What do you mean by "very slight"? A. I mean probably a cent or two.

Q. Now, did you have to refer the making of this rate of sixteen cents per cubic foot back to your principals at Liverpool? A. That I could not recall at that time whether we did or not—I don't think at that time we did.

1157 MR. BURLINGHAM: What was the date of it, Mr. Daniels?

THE WITNESS: 1908.

Q. Well, did you inform this conference—that is to say, the Prince Line and the Hamburg Line of this fact that you had made this contract? A. We would in the usual procedure; I presume we did.

Q. As a matter of fact, although this contract is made ostensibly by the Lamport & Holt Line, it is a contract
1158 made in pursuance of an agreement with these conferees, and in which they did have at that time an interest? A. The way that contract reads shows that the contract was made exclusively, originally, for our mail boats. Subsequently we gave, as you will notice in the second letter the privilege to the Singer Company of shipping under that contract by the other two lines.

MR. BALDWIN: Now, I offer in evidence the copy of a letter of the 7th of December, 1909.

1159 Marked Petitioner's Exhibit 100-a.

Q. The date of this letter is December 12, 1908 that I am now referring to. Do I understand you to say that at the time this was made that while, in form, it is the contract of the Lamport & Holt Line, it was not made in pursuance to an understanding between the Lamport & Holt Line and the conference lines? A. In what respect?

Q. In that you would have the right at your option to send the shipment of the Singer Sewing Machine Company
1160 at this rate over the other conference Lines? A. This contract or letter that you show, has a clause in it——

Q. That is not responsive—I want the question read again.

(Question read.)

A. We only had the option of shipping on the other steamers providing our own steamers were not interrupted in any way, according to the wording of the letter.

Q. So the only privity there was between the Lamport & Holt Line and the Prince Line and the German lines was with reference to your having made this contract and

a possibility that you would send some of the shipments 1161
of the Singer Company over that line, if you could not provide proper tonnage; is that right? A. We had that option.

Q. That is all the privity there was between you; that and nothing else? A. I don't recollect the circumstances sufficient to answer your question intelligently. The second letter will explain itself, probably.

Q. Well, now, according to the letter of December 7, 1909, you state to Mr. Hughes, that it is agreeable to you to extend the contract—that is to say this letter or con- 1162
tract that we referred to, Exhibit No. 100, so that the Singer Sewing Machine Company could send their shipments over the Prince Line and the Hamburg-American Line; is that right? A. Correct.

Q. Then, you must have had some agreement with the other two lines before you wrote that letter? A. My recollection, based on those two letters, is that the first letter, at the request of the Singer Company was an exclusive contract for our mail boats.

Q. You stated in your examination sometime ago that all your boats were mail boats? A. Let it go at that, sir. 1163
The biggest compliment you can give us we will accept. The second letter is prompted by the desire of the other lines to participate in the traffic, and we wrote the letter which gives the Singer Company the privilege of shipping by the other lines.

Q. In other words, you had informed the Singer Sewing Machine Company that you had made that agreement, and then, they in return, made a request upon you that they may participate in the business of the Singer Company's shipments? A. As I recollect it, it was the other way about. 1164
The Singer Company asked us for the amendment to the agreement, giving them the privilege of shipping via the other lines which our second letter gives.

Q. Then, if this was pursuant to a request of the Singer Sewing Machine Company—each wanted the right to participate in the business at that time; what was the necessity of your referring back or notifying the other two lines that you had this agreement? A. When we made the agreement we unquestionably advised the other lines, probably filed a copy of the contract with the conference secretary, which was the custom in the trade. After it had

1165 run for a year, as the correspondence will show, the other lines wanting to share in the contract, the Singer Company asked us to amend the contract.

Q. You say that the custom of the trade was that you should file the contract—what trade? A. Custom of the conference.

Q. You said trade? A. In other words it was a part of the usual procedure.

Q. Between these conference lines that when one of the members thereof made a contract such as this, that the
1166 others were notified? A. Correct.

Q. Was not the real purpose of that, that these conference lines wanted practically divided the traffic or shipments of these large shippers, so that each would get practically one-third interest in the business? A. No, I think they wanted a share of it—not by any means divide the traffic. The merchant is allowed to ship the traffic as best suits himself.

Q. I am not asking about the merchant, I am asking the reason for informing the New York conference or these conference lines in New York of the making of these agree-
1167 ments, and was not that the reason, because it was a part of the policy of the conference, that in so far as possible, that shipments of the large shippers to the Brazilian ports should be divided up equally between the conference lines? A. No, sir; I will answer it no.

Q. Now, the rate of sixteen cents per cubic foot, at least, so far as the Singer Sewing Machine Company was concerned, was a uniform rate that each one of these conference lines was charging, wasn't it? A. Yes, sir.

Q. And you said a moment ago that that rate was only
1168 slightly below the regular tariff? A. That was my recollection.

Q. Well, I show you what purports to be a copy of a letter of April 11, 1909, by Busk & Daniels to this same Hughes, which among other things, says, "Although the present contract is much below our present rates, we shall be glad to allow it to run on the present basis and terms." Now, from the 12th day of December, 1908, to 8th day of November, 1909, this same rate of sixteen cents per cubic foot had obtained with reference to the Singer Sewing Machine business, had it not? A. It held during the life of the contract.

Q. Then if it is only slightly below, how did you happen 1169
to state in this letter that it was very much below? A. That is written a year after the contract was made.

Q. Did you say the same sixteen cents per cubic foot obtained right along, down to that date?

MR. BURLINGHAM: Under that contract he said—he did not say in the American.

THE WITNESS: I think I said under the contract.

Q. Had you any other contract with the Singer Sewing Machine Company with reference to the shipments made 1170
after the 12th of December, 1908, and up to and including the 8th day of November, 1909? A. I should say not.

Q. Well, as a matter of fact, didn't this contract continue right along down to and including December 31, 1910? A. I could not tell you how long it ran without looking up the records. There have been subsequent contracts made and I think you have the subsequent contracts.

Q. Well, when you wrote this letter of the 8th of November, 1909, and used the terms that I have just referred to, namely, that the present contract is much below our 1171
present rates, had there been any change, substantial change in the published rates during that period of time? A. I should gather that there had without having the actual knowledge in front of me.

Q. Now, have you got the published rates? A. At that time?

Q. Yes? A. No, sir.

Q. I don't mean here in Court, but at your office? A. I don't think we have got them preserved at all.

Q. I notice that the last clause of Exhibit No. 100, that is 1172
the letter of the 12th of December to the effect that this contract be continued for December 31, 1909, subject to ninety days notice to the contrary to be given by either party. Now, is it not a fact that that contract did continue down to and including December 7, 1909? A. The contract is made to run all through 1909.

Q. 1908 and 1909? A. It is made for a year—that would bring it up to December 31, 1909.

Q. Was it continued right along to 1910? A. It was presumably continued until the notice of withdrawal was given. When it was given I don't know, but you must have the records here in the typewritten records of the secretary.

1173 Q. It is not a question of what we have here—it is what you recollect about it? A. I don't recollect the date at all.

Q. I ask this question again to see if I can get you to clearly understand it so that you can answer it. Are you prepared to say now on the record that the rate of sixteen cents per cubic foot was any particular percent less than your printed list or tariff on the 8th of November, 1909, than it was at the date of the execution of this agreement on the 12th of December, 1908? A. Without something to refresh my memory, I cannot give you those details.

1174 Q. Was there anything in the business during this period that I have just referred to that you can now recall that would bring about any difference in published rates, any necessity for it? A. The rates, as a rule advance, but the reason why they advance at the different times, I could not specify, without coming down to the specific point.

Q. Have you any data that you could refresh your recollection as to what your published rate was on the 8th of November, 1909? A. I don't think in our office we have kept any of those old records or files, but in the secretary's office and the data you have is the only place they could be

1175 found.

MR. BURLINGHAM: Now, Mr. Baldwin, that is the tariff rate on sewing machines in December, 1908.

Q. What it was on the 12th of December, 1908 and again in November, 1909.

MR. BURLINGHAM: So as to see whether that was the language of exaggeration or solicitation.

MR. BALDWIN: Precisely.

1176 Q. Now, Mr. Daniels, is it not a fact that at a period sometime later than the 8th of November, 1909, the Singer Sewing Machine Company, instead of making their contract to send their machines and parts thereof to the Brazilian ports with the Lamport & Holt Line, as they did then, made the contract with the Hamburg-American Line? A. I think that is correct.

Q. And after the contract was made by the Hamburg American Line, with the Singer Sewing Machine Company, the Lamport & Holt Line was furnished with the particulars of that contract? A. Yes, sir.

Q. And in conference—at this conference they were fur-

nished a copy of it, weren't they? A. It was placed on the record of the conference. 1177

Q. Didn't the Lamport & Holt Line or Busk & Daniels have a copy of it? A. Yes.

Q. I show you what purports to be a memorandum of agreement bearing date the 23rd day of November, 1912, is that a copy of it? A. It looks quite in order, sir.

Q. This purports to be a copy of a contract, a copy of which the Lamport & Holt Line received? A. I think it is correct.

Q. Do you know whether or not prior to the date of the paper that I have just shown you, and somewhere between that date and the 8th of November, 1909, there was another contract? A. There was a previous contract, yes, sir. 1178

Q. And who was that made with? A. I think that was made by the Hamburg-American Line.

Q. Have you made a copy of it? A. You will also find that in the records of the secretary.

Q. Of the conference? A. Yes, sir.

MR. BALDWIN: I offer this paper for identification at this particular moment.

Marked Petitioner's Exhibit No. 159 for identification. 1179

Q. Now, referring back again to the contract of December 12, 1908, is it not a fact that you quoted this rate of sixteen cents a cubic foot to the Singer Sewing Machine Company upon the understanding that they were to confine all of their shipments to the Lamport & Holt Line or to these conferees, independent of what this says, what do you say about it? A. It was a matter of trade between the Singer Company and ourselves. I do not think that those conditions and terms were considered at the time. The contract was simply as it reads for their shipments. 1180

Q. Well, you had made contracts with the Singer Sewing Machine Company before this Exhibit No. 100, had you not? A. I don't recall. If they had previous ones, they would be on file.

Q. It says here, "It is agreed that all shipments from New York to Rio and Santos, from January 1 to the 31st of December, 1909, will be shipped by the Lamport & Holt Line." Don't you understand that at the time, all of their shipments in order to get this rate of sixteen cents a cubic foot were to be shipped in pursuance of this agreement?

1181 A. I had not considered that that was a part of the contract, not a consideration of the rate; that is customary in contracts of a manufacturing concern of that character to make a contract covering their shipments.

Q. Well, during this period or at about this time had any other sewing machine company offered any of its products to the Lamport & Holt Line to be shipped to Brazil? A. That I do not recall, but from my knowledge, I think the Singer is far ahead, as the biggest.

Q. I did not ask you if it was the biggest—I asked you
1182 if any other sewing machine company had, during that time, offered to the Lamport & Holt Line its shipments to Brazil? A. Not to my knowledge; because if they had——

MR. BALDWIN: I ask to have this witness instructed not to add something that is not germane to the question.

THE EXAMINER: I think it will save time.

MR. BURLINGHAM: Mr. Montgomery, before we adjourn, I want to make a statement. Referring to the subpoena, 27th of December, 1912, paragraphs
1183 forty-one and forty-two, calling for cables sent by Lamport & Holt, to Busk & Jevons, or Busk & Daniels, or cables sent by Busk & Daniels to Lamport & Holt, referred to in the letter from Lamport & Holt to Busk & Daniels, dated May 18th, 1909, we have found two cablegrams which are already marked for identification, as exhibits 88 and 89 for identification, being cablegrams sent under dates of May 4 and May 5, 1909, to Lamport & Holt by Busk & Daniels. We have searched for cables received at
1184 that period by Busk & Jevons or Busk & Daniels and have been unable to find them.

MR. MONTGOMERY: Do you regard a cable of May 4 as being the one mentioned as confirmed in the letter of May 18?

MR. BURLINGHAM: I think so.

MR. MONTGOMERY: I think not, Mr. Burlingham. I think they are confirmed by an earlier letter.

MR. BURLINGHAM: Very well, those are the only ones we have got.

Hearing adjourned to Tuesday, February 11, 1913, at 10.30 A. M.

New York, February 11th, 1913. 1185

Hearing resumed pursuant to adjournment.

Appearances:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles S. Burlingham, Esq., and Charles Burlingham, for Frederick T. Busk, et al.

1186

MR. BURLINGHAM, SR.: Messrs. Convers & Kirlin today have authorized me to say that we can go on without them and also Senator Spooner has no objection to our proceeding.

MR. BALDWIN: I offer Exhibit No. 3 for identification, the American tariff of March, 1912, and also Exhibit No. 158, the European tariff, produced at the last hearing.

Received in evidence as Petitioner's Exhibits 3 and 158.

1187

LORENZO DANIELS, recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Daniels, in the last hearing I asked you whether a new tariff was not in the course of being printed and you said you thought it was——

Mr. Spooner enters at this juncture.

Q. (Continuing.) What have you discovered about that? A. They are making up a new tariff for the printer and there have been several changes from the old tariff—the rates have been advanced. 1188

Q. The old tariff is Exhibit No. 3 of March, 1912? A. That tariff has had several advances in a year.

Q. Can you tell now what those advances are? A. A general advance of 10% and $1.20 a ton advance.

Q. Just explain what you mean by "general"? A. The entire tariff has advanced 10% and also $1.20 per ton.

Q. Over the rates that are in this Exhibit No. 3? A. Yes.

1189 Q. I was examining you at the last hearing just before we closed concerning the contract with the Singer Sewing Machine Company. Perhaps you will recollect I asked you whether or not this contract of December 12th, 1908, was not in fact made for the benefit of all the conference lines. Do you remember that question? A. Yes.

Q. And you testified it was not. Subsequently you testified that it was changed at the request of the Singer Sewing Machine Company so that the benefits of the contract as far as they were concerned might be operated with the
1190 other companies. You remember that? A. In general, yes.

Q. As a matter of fact was not that supplemental extension of the 7th of December, 1909, Exhibit No. 100-a made at the request of the Prince Line and the Hamburg Line and not at the request of the Singer Sewing Machine Company? A. My recollection at the time was that the other lines wanted to share the contract and they discussed it with the Singer Sewing Machine Company. Their rates were net—ours carried 10% primage and it was a concession on our part. I do not know whether you could put
1191 your finger down to who started it.

Q. You testified at our last meeting that this extension of the contract on the date I have mentioned was done at the instance of a Mr. Hughes? A. I think there were some brokers concerned in it and I think there were some brokers had more interest in it than Mr. Hughes.

Q. I show you Exhibit No. 79 for identification and ask you if that is not a copy of a letter bearing the date 11th of January, 1909, from Busk & Jevons to the Lamport & Holt Line? A. I should think so, yes (Exhibit No. 79 offered in evidence).

1192 Q. I show you a copy of a letter dated 4th of December, 1908, purporting to have been sent by Messrs. Busk & Jevons to the Lamport & Holt Line, it is No. 71 for identification. Is not that a copy of a letter from Messrs. Busk & Jevons to Lamport & Holt Line? A. Yes.

MR. BALDWIN: I offer in evidence that part of the letter beginning at the foot of the second page under the heading "Singer Manufacturing Company" and closing with the first paragraph on page three and which reads as follows: "Since writing you last week that this contract had been closed at 16c. and

10% to Rio de Janeiro and Santos, on presenting the 1193
contract for signature we were surprised at being informed that these shipments were to be made by our line only and no persuasion on our part can induce the company to share their shipments between the other lines. We immediately put the position before our colleagues who cabled to their principals for instructions. Messrs. Gerhard have the reply from the Prince Line that they will not agree to our carrying the whole of the shipments but after waiting three days for Messrs. Funch, Edye & Com- 1194
pany to intimate what position they intended to take up, without getting any satisfaction we cabled you to offer instructions how to act. We do not know if we have the authority to close the business without the sanction of the other lines, after having given the rate in conformity with the conference terms but we consider that nothing better can be done in respect to the rate and we fear that if we refuse to accept the whole of the shipments by our line the business will go to the Lloyd and the pool 1195
will be the losers. We now wait your instructions how to act in this matter."

Q. After looking at those two exhibits—isn't it a fact that the Singer Sewing Machine Company not only did not ask for, but did not want any provisions in this contract made with the Lamport & Holt Line to send their sewing machines and parts over the other conference lines? A. That was my understanding at the time the contract was made. A year later the situation had changed.

Q. This is dated 4th December, 1908, and the original 1196
contract was the 12th of December, 1908, so that this letter, Exhibit No. 71 signed by you was immediately preceding the making of that contract in which you say amongst other things that you were surprised at being informed that the shipments were to be made by your line only and no persuasion on your part would induce the company to share their shipments between the other lines? A. That was my understanding when the contract was first made. It was made with our boats exclusively.

Q. Perhaps you did not quite understand. You testified the other day almost the contrary of what you are saying

1197 now. I want you now to state whether it is not true that the making of this supplementary arrangement of December 7th, 1909, was in pursuance to the demand of your conference and not to the request of the managers of the Singer Sewing Machine Company? A. I have not read my testimony through but I do not think it could be wrong in any respect excepting confusion of the two years. The year that the contract was made the Singer Sewing Machine Company wanted to ship exclusively by our fast boats. They had special reasons for doing it. At the end of the year when the supplementary letter was written and
1198 authority given to the Singer Sewing Machine Company to ship by the other two lines—as I recollect the incident it was by constant application of the other lines to the Singer Sewing Machine Company to participate in it, and the influence of the same on the Singer Sewing Machine people to prompt them to do it.

Q. If, as you testified, it was upon the request of the Singer Sewing Machine Company, you now wish to qualify and change it because your recollection now is that the making of the contract and giving the privilege of the
1199 other lines to take part or the whole of the Singer Sewing Machine Company was due to the insistence of your conference lines and not the Singer Sewing Machine Company — A. No, I do not want to retract. It was a combination of the two.

Q. I call your attention to your testimony on page 492 of the minutes: "Q. In other words, you had informed the Singer Sewing Company that you had made that agreement, and then, they in return, made a request upon you that they may participate in the business of the Singer
1200 Company's shipments? A. As I recollect it, it was the other way about. The Singer Company asked us for the amendment to the agreement, giving them the privilege of shipping via the other lines which our second letter gives." That is what I ask you, whether you wish to qualify that in pursuance to this exhibit I have shown you this morning—that that letter extending the terms of this agreement with the Singer Sewing Machine Company to the other lines was in pursuance to a request of the other lines and not the Singer Sewing Machine Company? A. I am only testifying from my recollection.

Q. Cannot you answer the question? A. My recollection

would be that it was a little of both. The other lines con- 1201
stantly applied to the Singer Sewing Machine Company and they had net rates instead of net rates and primage and the thing was agitated so that we sat down and wrote the letter and that is my recollection of the whole thing.

Q. If you will just answer my question. Don't you wish to change your testimony that I have just read to you from page 492 to the effect that the Singer Sewing Machine Company asked for the amendment? A. No. With the qualifications I have made now I think the answer to the testimony is perfectly correct.

1202

Q. Do you now state that the Singer Sewing Machine Company in any way or at any time after the making of the original contract or the supplementary extensions thereafter, directly or through Mr. Hughes or anybody else intimated to you that they wanted the other lines brought into this contract? A. That is my impression.

Q. Let me call your attention to Exhibit No. 79. I call attention to this statement, "The representative of the Singer Company, Mr. Hughes' reply to the letter was, that he did not want the other companies named in the contract as he did not want to be bothered by their repre- 1203
sentatives coming to his office." In view of that would you still say there were not any statements, representations or requests of any kind by the Singer Sewing Machine Company or Mr. Hughes that the conference lines be allowed to participate under this agreement? A. My recollection is that at the time there was such an intimation from some interest of the Singer Sewing Machine Company—whether it happened to be Mr. Hughes or other brokers.

Q. Intimation to what effect? A. Asking for the privilege of shipping at the lower rate on the other lines. That 1204
is my recollection but I may be wrong.

Q. You still have that recollection in spite of the clause I have just read you in the letter of the 11th of January, 1909 and Exhibit No. 79? A. That is still my recollection. Mr. Hughes was a peculiar man.

Q. "L.D." Does not that indicate that you dictated that letter? A. Yes, everything is correct.

Q. This Exhibit No. 100. You subsequently reported that agreement to the New York conference? A. I presume so.

Q. And a copy of the agreement was attached to their minutes. I show you page 109 of the New York minutes? A. I should call them records; yes, sir, you are correct.

1205 Q. You regarded this contract then as a contract made for the benefit of the other lines? A. If they were in "pool" at that time—as I think they were—it would naturally be for the benefit of the "pool."

Q. You mean the conference lines? A. Of the "pool."

Q. Just what do you mean by that? A. Practically the same thing.

MR. SPOONER: Why the necessity for that?

MR. BALDWIN: If you had been here you would perhaps see the necessity for my insisting on these
1206 specific answers.

MR. BURLINGHAM: I was here and I don't.

Q. After Busk & Jevons had signed this contract, Exhibit No. 100, 12th of December, 1908, were you not required to get the consent of the other conferees before you could make it effective? A. No, we would get their consent before we completed negotiations.

Q. Didn't it come up after discussion at the conference that you had signed it on or about January 13th, 1909? A.
1207 I cannot answer that without refreshing my recollection. You have all the documents that would probably show.

Q. Looking at the memorandum, page 109 to which I called your attention; does that refresh your recollection? A. Not as to any discussion.

Q. As a matter of fact it was cabled for some reason or another after the contract was first presented to the conference—look at that? A. That is simply the presentation of the contract.

Q. We call your attention to the minutes of the conference on page 110, dated January 13th—does that show any dis-
1208 position made? A. That shows the contract was tabled.

Q. "This contract is tabled pending further instructions from the principals?" A. That is the record.

Q. Having seen that, don't you know, as a matter of fact, that this contract was not deemed operative by the conference lines until the principals of the conference had a chance to pass on it? A. No, I should consider that the contract having been presented and signed that the Lamport & Holt Line were obligated to carry it out.

Q. But as between Lamport & Holt, the Prince and German Lines for some reason you had to get the instructions of your principals? A. We supplied any quotations.

Q. Answer my question—yes or no? A. No, we did not 1209
have to get it at the time.

Q. Who made the entry on page 110? A. I do not recognize the writing.

Q. There is no statement in there that it had to be referred to the principals of the German Line or Prince Line? A. No.

Q. In the absence of any limitation wouldn't you say you all had to get the consent of your principals? A. No. If you will allow me to clear the point. I should presume in the record that you show me that because the contract was 1210
an exclusive contract the other two lines objected and so returned it to the principals. I think that is the entire gist of that argument.

Q. Did you have any discussion with the agents of the other two lines on that at the conference held in New York or any other place about the making of this contract between the dates thereof—December 12th, 1908 and January 13th, 1909—about this contract—yes or no? A. Your letter recalls to my memory and suggests the fact that we agreed among the three lines on the rates and the general terms
of the contract. When it was presented for fulfillment the 1211
Singer Sewing Machine Company apparently made Hughes —from the exhibit you have just shown me—insist upon the exclusive room of our steamers and we accepted it. That acceptance is apparently objected to by the other two lines —that is as near as I can give you as to actual facts.

Q. The agents of the other two lines were trying to get the Singer Sewing Machine business at that time? A. No, I simply think they wanted the contract made over the three lines again.

Q. For reasons of their own they wanted to confine their 1212
shipments to the Lamport & Holt? A. I understand the people in Brazil requested them to do so at the time.

Q. They did not always send their shipments to the same consignee? A. That I could not answer, but I think their consignee is their own distributing agent.

Q. That is, it was due to a request of the shipping agent of the Singer Sewing Company in Brazil that they wanted this exclusive contract with your line? A. That is my recollection.

Q. And it was not due to the fact that the Lamport & Holt had any superior facilities or that its boats were

1213 faster? A. Its reasons you can infer. I should imagine that was its object.

Q. Now, you say the real object was the request of the agent in Brazil? A. The regularity of the service.

Q. It was not due to the fact that Hughes wanted to ship on the fast line? A. I presume——

Q. Has Mr. Hughes or any other person connected with the Singer Sewing Machine Company made any statements to you as to why they wanted to ship on that line? A. I got my information from Mr. Hughes that that was the cause.

1214 Q. The cause was that their agent in Brazil wanted it over that line on account of it being a more regular and faster service. Was it due to the fact that the Singer Sewing Machine's distributing agent in Brazil had made this request or that Mr. Hughes or some other person of the Singer Sewing Machine Company here said that the Singer Sewing Machine Company wanted to ship by the faster line? A. I should imagine the actual business reason was the boat giving the better service and the man at the other end would know this reason and his reports to the Home

1215 Company would be fully considered.

Q. What expressed reason was there given to you why they wanted to make an exclusive contract with you? A. I understood from them at the time they made the contract why they wanted an exclusive contract by our boats was because their people abroad had recommended it and advised it on account of the regularity of the service and the speed of the steamers.

Q. Now, you have got down to three reasons. First, because of superior speed of your boats, secondly that the

1216 distributing agent at Brazil has asked for it and thirdly that some person abroad wanted it because of the speed and regularity of your service? A. I am explaining that the person abroad is the agent.

Q. Same person? A. Yes.

Q. Who told you that? A. That was the impression I got.

Q. Who from? A. Who gave it to me—everybody——

Q. Can you say if Hughes gave it to you? A. The negotiations that we had were with Hughes and I should say that it was from Hughes.

Q. Which Hughes? A. The gentleman—one was the father and he is dead now and now there is the son.

Q. What are his initials—G. M. Hughes, was he the repre- 1217
sentative of the Singer Company? A. He attended to their traffic arrangements, but was not connected with them otherwise.

Q. Subsequently a new form of contract was made with the Hamburg-American Line? A. I think their contract followed the expiration of this one.

Q. How long did the contract—Exhibit No. 100—extended as it was by that letter of the same Exhibit—how long did that continue in that form? A. You will have to let me refer to the record. 1218

Q. I show you what purports to be a copy of a contract dated 16th of December, 1910, between the Singer Sewing Machine Company and Funch, Edye & Company as agents for the Hamburg Line and I ask you if you will look at that and say how long the other contract was in force? A. I think this contract followed——

Q. It continued in full force and effect up to the 16th of December, 1910? A. Yes. I think there was some little change but they followed each other.

MR. BALDWIN: I offer now in evidence what pur- 1219
ports to be a copy of a contract of that date.

Marked Petitioner's Exhibit No. 160.

Q. Under what circumstances was it that the contract from the Singer Sewing Machine Company was switched over to the Hamburg-American Line? A. No special circumstances except that they made it with the Hamburg-American instead of with us.

Q. We find by your letter of January 11th, 1909 that they did not want to be bothered with the Hamburg-American 1220
or the Prince Line, and do you mean to say without any reason or communication at all they made this contract direct with the Hamburg-American instead of with the Lamport & Holt as before? A. No, I don't think that the conditions of the contract at that time were all re-opened for a new arrangement, and it apeared that the German Line had held the contract for the Singer Sewing Machine Company for other ports than the ones that we had the previous one made for. In other words, the number of ports you have enumerated on the contract—and they were negotiating through brokers, I think Messrs. Black & Geddes

1221 of New York. The result of the negotiations were that they made the contract.

Q. Did the Singer Sewing Machine Company establish their own department and do away with brokers on the first of December, 1909? A. No, they still dealt through the firm of brokers I think I mentioned in the contract.

Q. You do not know anything about the facts that they did establish their own department for the purposes of freighting? A. Somewhere about this period old Mr. Hughes died and his son who was connected with the
1222 Singer Company at its factory at Elizabeth Port took up the traffic department.

Q. Do you remember the name of the Hughes who died? A. No, I do not.

Q. G. M. isn't it? In you letter of January 11th, 1909, you speak of G. M. Hughes and that name appears as signatory to the contract of December 12th, 1908? A. He was the senior man I mean.

Q. Is he the senior? A. He was, but he is now dead.

Q. Are you quite sure that he is dead? A. No, I am not
1223 quite sure that he is.

Q. Well, I want to tell you that he is alive and kicking. One of the real reasons why the Singer Sewing Machine Company made a contract with the Hamburg-American Line was because of an arrangement between the conference lines here in New York that they should take it over in succession? A. There was no such arrangement. No.

Q. And the only reason you know of is the one you have just expressed? A. Yes.

Q. It was not discussed at the New York conference that
1224 it be advisable for one reason or another to have the Hamburg-American take it instead of your line? A. No, not generally by any arrangement. In fact, there was quite some discussion over the matter but I do not think it is necessary to go into that now.

Q. "This contract is to run from January 1st, 1911, to December 31st, 1911, and continue thereafter"—was that contract changed thereafter or did it continue up to the present time? A. The contract, I think has been amended, at least once or twice—since that date. The records you have will show you.

Q. Was not this contract made with the Hamburg-American Line upon the same conditions as the contract made

with the Lamport & Holt—that it was to be for the benefit 1225
of the conference? A. The contract is made——

Q. Cannot you answer it yes or no? A. Not made upon the same conditions as the original contract.

Q. Was it made for the benefit of the conference, the same as the former? A. I think the pool has expired; in which case it was made largely for the benefit of the Hamburg-American with the option of shipping by the other two lines.

Q. You say the "pool" has expired—what pool? A. According to your records it lasted over a year. 1226

Q. Don't you know what the pool is? Hasn't it occurred to your recollection—can you state what the pool was?

MR. BURLINGHAM: That question "can you state" calls for a yes or no.

THE WITNESS: The pool ran from July, 1908, to January 30th, 1909.

Q. Then this contract was not reported back to the conference by the Hamburg-American as having been made? 1227
A. It was reported. It would be reported in the ordinary course.

Q. If the pool had been abandoned why had it been reported back to conference? A. That is our custom to report our contracts for harmonious working—contracts and and rates.

Q. I notice that the rates per c. f. landed at Victoria and Santos under the contract made with the German Line is 18 cents per c. f. Are you aware of any agreement between Lamport & Holt, Prince Line and Hamburg Line as to the 1228
rate fixed in that contract? A. The rate would have been agreed upon.

Q. As a matter of fact before the Hamburg-American Line took over this contract themselves, they had conferred with the other conferees and agreed with them upon the rate which was to be established in this contract. Yes or no? A. We had the same authority to close if we wanted to. The rate was agreed for all.

Q. Where it had been referred back to the conference, and the rate of 18 cents per c. f. landed agreed upon—— A. I think you are wrong in the "landed."

1229 Q. That is what it says here. Will you answer my question—Mr. Stenographer read the question—"Q. I notice that the rate per c. f. landed at Victoria and Santos under the contract made with the German Line is 18 cents per c. f. are you aware of any agreement between the Lamport & Holt, Prince Line and Hamburg Line as to the rate fixed in that contract?" A. The rate was agreed upon but not the agreement in respect to the contract.

Q. Was it agreed between the conference that the German Line should charge 18 cents per c. f. landed, plus an
1230 additional charge of $1.80 for Rio? A. If the contract says so, yes.

Q. And this was prior to the German line—Hamburg Line making this agreement? A. The rates were agreed upon prior to the Hamburg Line——

Q. Was it also agreed in advance that the shippers should forward their entire shipments of sewing machines and parts to Brazil to get that rate? A. I doubt if that was discussed, but that is the customary contract.

Q. Was it also arranged in advance that the German
1231 Line should have the option of shipping by the steamers of the Lamport & Holt and Prince Line? A. The terms of the contract were not arranged in advance.

Q. Wasn't it discussed and agreed at that conference that this contract with the German Line was to be a continuation and amendment of the original contract with the Lamport & Holt Line of the 12th of December, 1908? A. No terms other than the rates were discussed.

Q. I call your attention to this provision in this Hamburg contract Exhibit No. 160 "In continuation and amend-
1232 ment of freight contract of Lamport & Holt Line, dated 12th December, 1908, and of freight contract of Hamburg-South American Steamship Company and Hamburg-American Line, Joint Service, Funch, Edye & Co., Agents, dated November 12, 1909." Now, do you mean to say that although that expressed provision is in this exhibit that there was no understanding between the conference at all, that that was to be an extension of your original contract with the Singer Sewing Machine Company? A. There was no agreement except on the matter of rates.

Q. Was there any discussion about it? A. Not any discussion, no.

Q. How did it come then that this provision was in this

contract? A. I think it was done on their own authority. 1233

Q. Was not it also on their own authority that they had a right to send the Singer Sewing Machine shipments over your line? A. I think the contract was—the drafting was their own.

Q. Had the Lamport & Holt Line given them the right under this contract purporting to be a continuance of the contract of December 12th, 1908, to ship the Singer Sewing Machine Company's commodities over your line? A. We had agreed to no terms in advance except the rate.

Q. When it was made, did the Hamburg Line return this 1234
back to the New York conference? A. I think they did.

Q. Was nothing done to confirm this contract? A. I think the contract was held for some time owing to discussion amongst ourselves.

Q. Was it afterwards confirmed? A. In the end I think it was confirmed.

Q. And you say now that this contract, No. 160, although purporting on its face to be a continuation of the contract of the 12th of December, 1908, was made by the Hamburg-American Line and contained this specific provision of
option to ship over your line and the Prince Line without 1235
in any way consulting the Lamport & Holt Line? A. Yes —let me qualify that statement. We had been consulting in the matter of rates and in the matter of negotiating with the Singer Sewing Machine Company for what we understood to be part contracts only at that time.

Q. Had your firm made any offer with the Singer Sewing Machine Company to renew the contract direct with your company? A. We did—yes.

Q. And what was the reason you could not do it? A.
Some misunderstanding at the time—I do not recollect. 1236

Q. It was not because of the rates? A. No.

Q. It was not because you could not offer as good facilities? A. Apparently, no.

Q. As a matter of fact your boats were faster? A. Yes.

Q. But as the German contract shows this rate was quoted and the contract made in this form provided that the Singer Sewing Machine Company would confine its shipments for that period to the Hamburg-American Line with the right——

MR. SPOONER: That is argumentative.

1237 MR. BURLINGHAM: I object—the contract states that itself.

THE WITNESS: That would be my answer—the contract states that itself.

Q. The reason for quoting the rate in use under your contract of December 12th, 1908, was because they confined the shipments to your line?

MR. BURLINGHAM: That also I object to, because the contract is in evidence and speaks for itself.

1238

A. I think the contract speaks for itself.

Q. I show you what purports to be a copy of an agreement of November, 1912, between Funch, Edye & Company, agents of the Hamburg South American Line and Hamburg-American Line joint service with the Singer Sewing Machine Company—is that a copy of an agreement made on that date and now continued in force between the Singer Sewing Machine Company and the Hamburg Lines? A. I think so.

1239

MR. BALDWIN: I offer that in evidence.

Marked Petitioner's Exhibit No. 161.

Q. I notice that the rates quoted to Victoria and Rio de Janeiro are as follows: Victoria 27½c.—I suppose that means c. f.? A. Yes.

Q. Rio 21¢ plus an additional charge of $1.80 per ton of 40 c. f. That is to be returned, provided the steamer discharges at the New Quay at Rio and a certificate of discharge is given to that effect. Santos 21¢. Were these rates fixed under this agreement arranged for in advance at the New York conference? A. I think they were—yes.

1240

Q. This lasted from December 1st, 1912, to December 31st, 1913—that is now in force? A. Yes.

Q. Going back again to your contract of December 12th, 1908, in which the rate is 16¢ per c. f. plus 10% primage—was that the berth rate at that time? A. For contracts—yes.

Q. Do I understand you rightly that you say the rates that are fixed upon time contracts run for a period of time and where the total amount of a shipment is required to be sent over your line to be a berth rate? A. No, I should

consider—it is a berth rate in one sense, but the time and 1241
contract rate you mean is a tariff rate.

Q. When the shipping trade ordinarily considers berth rates—is not that entirely separate and distinct from rates that your company is accustomed to quote for those who are making agreements in advance for a period of time? A. The contracts are generally lower than current tariff rates.

Q. Isn't there a term well known in the shipping trade called a "berth rate"? A. It is common on the Atlantic market where it is an open market and there is not a traffic 1242
established. Where there is a tariff established the "berth rate" does not apply.

Q. You always speak of rates which are made for single ships and where the ships have no time contract as a "berth rate"? A. Berth tariff rate—yes.

Q. Was the rate of 16¢ per c. f. a regular tariff rate at the time you entered into this contract? A. No.

Q. Do you remember what the regular rate was? A. At periods about 18¢ and I find on record it went to 21¢.

Q. As to December 13th, 1908; do you now recollect what the rate was? A. I had the impression that it was 18¢ just 1243
prior to the contract, but I may not be able to confirm that.

Q. During the period of your contract? A. The records I found later are 21¢.

Q. As a matter of fact wasn't it 19c. at the date you made that contract? A. That I cannot find out.

Q. During the period the contract was made with the Lamport & Holt Line it never was as low as 16¢—the berth rate? A. Tariff rate—I do not think it was.

Q. It was not in that pool—19¢? A. I did not find the records, but I should think 16¢ was a concession. 1244

THE WITNESS: I would like to make a statement—a moment ago you asked me if rates were fixed in conference to which I said, yes—my counsel now tells me that I had better amplify it that the rates were cabled to the conference and came back accepted.

Q. Do you mean that to apply to each one of the contracts? A. No—the one you asked me about just now.

Q. You cabled where? A. They were cabled to the conference—to the conference in London.

Q. You speak of what is known as the London conference? A. Yes.

1245 Q. That is confined to the four defendants? A. Yes.

Q. What other lines? A. That is all.

Q. Before you fixed this rate of 16¢ per c. f.? A. In the contract of 1912 you ask me about?

Q. Yes. About fixing 16¢ in the original contract—did you get authority from London for that? A. I do not recollect that without looking it up.

Q. Did you cable abroad to the London conference for authority to fix 16¢ per c. f. landed fixed in Exhibit No. 160? A. That I cannot answer without reference, but in a
1246 general way we had to get authority for these proposed rates in all instances where it was a specific rate.

Q. This last contract you recall that you did? A. Yes.

Q. Your recollection is now in the course of business you think you get the same authority for each one of these contracts? A. No, I think the earlier contracts were closed on some general authority.

Q. Had anything occurred in the method of conducting the conference businses that required the German Line or yourself or anybody to agree to this fixed rate established in Exhibit 161—the last Hamburg contract. Had any
1247 change occurred in carrying on the business of the conference lines that required you to get a specific direction or authority? A. In the last few years we have drifted into getting more specific authorities than we had a few years ago, when we had authority that applied more generally.

Q. I understand you to say what you have said before—that sewing machines are not on the competitive list, that is to say they are not exported from the United Kingdom—from European ports to Brazil? A. I think not—no. There
1248 you have misunderstood me. It might interest you to know that Singers have several large factories—one in Glasgow.

Q. Sewing machines not being on the competitive list, the minimum rate that would appear on the German tariff rate would be the minimum rate in American money demanded by your conference? A. Yes.

Q. After 1908 when the Lamport & Holt made their contract with the Singer Sewing Machine Company to quote less than the minimum rate you would have, under your general instructions, to report that to the London conference? A. A copy of all the records is sent to the London conference. Under the general system it would be re-

ported through the records, a copy of which was sent to 1249
the London conference.

Q. You testified generally the other day that you could not go below the minimum tariff without getting the consent of your principals. You remember that? A. Yes.

Q. Now the fact that the Singer Sewing Machine contract is for sixteen cents per c. f. and your recollection is that at the time the minimum tariff for sewing machines was eighteen cents or more—that being a fact weren't you required and did not you get the consent of your principals before you fixed the rate of sixteen cents, which is less than 1250
the minimum tariff? A. I presume unquestionably I had the authority to do it but the actual details I would have to look up the records for. We cannot do anything without authority.

Q. Do you know what rate in 1908 you quoted any other sewing machine company? A. If they would apply we would quote them the tariff rate. I do not know whether there was another contract or not at that time. The record would show that.

Q. You have not been able to get the tariff rate of 1909- 1251
10? A. I have not been able to get it. I could only get 21 cents. I found that on an old manifest.

Q. Of what year? A. 1908.

Q. Do you recollect making shipments with the Home Sewing Machine Company in 1908? A. Yes, small shipments were made before that on the rate of 21 cents.

Q. Did not they ship quite frequently? A. No—very infrequently.

Q. What about in 1909? A. Their shipments have always been very small.

Q. You have no recollection of ever having quoted them 1252
a rate as low as eighteen cents? A. I could not say without referring to the records, because I am not familiar with these details.

Q. Is it a fact that you never went below the fixed minimum tariff for shipments over your line to any shippers unless they made an agreement in advance by which they agreed to confine all their shipments to your line? A. No. We have made agreements that were not covering all shipments. They are to people for specific lines at special rates at times.

1253 Q. Would that depend on the size of the shipments? A. A special contract generally is a large contract covering a certain period of time. Everything in it is specified.

Q. Didn't the Home Sewing Machine Company approach you and make an endeavour to have you quote them the same rates you were quoting the Singer Sewing Machine Company? A. I do not think it is possible, because we would have been very glad to have done that for them.

Q. Regardless of the size of the shipments? A. Yes.

Q. You know that the Home Sewing Machine Company
1254 ship in very much smaller quantities than the Singer Sewing Machine Company? A. I asked to have that matter looked up the other day and I found that they ship in smaller quantities rather infrequently, but it is our policy to give everybody the same rates.

Q. You hold yourself open to make contracts with the Home Sewing Machine Company provided they agree to confine all of their shipments under the same time agreement to the Lamport & Holt or the conference lines? A. If they would, we would give them the same contract as
1255 the Singer Sewing Machine people and we would be glad to quote it.

Q. Regardless of the number of machines? A. Yes.

Q. By the "same contract" you mean that they were to confine all their shipments to your line and the conference lines? A. Yes. That is the way all those contracts read.

Q. Didn't you make it a practice in 1908 down to the present time to report to the conference all of your contracts whether time contracts or not? A. Yes, sir. I do not know whether we reported specific steamer contracts
1256 or contracts for a few sailings ahead. I would have to look that up.

Q. You did one or the other always? A. As a general practice we always reported the important contracts.

Q. That has been continued down since 1909. You say it is usually demanded? A. It has been continued.

Q. Right down to the present time? A. Yes.

Q. What do you mean when you say the word "pool"—a division of commission? A. Unless that was a specific provision the understanding of a pool——

Q. What do you refer to?

MR. BURLINGHAM: He is trying to tell you.

MR. BALDWIN: He said "the understanding." I 1257
want his opinion.

WITNESS: Is that the partners that are interested take certain deductions for operating expenses and put the balance in a pool or a common pot—in the middle of the table, in other words.

Q. Was this pool to be a pool as provided for in Exhibit Two of the Petitioner? A. That pool I imagine would be operated in the same manner.

Q. Did you have any other pool? A. That is the only 1258
pool.

Q. That is the pool you refer to? A. Yes.

Q. If that was abandoned in 1909, why is it that even down to the present time you make a practice of reporting to the New York conference your contracts, whether they are booked ahead or not? A. We have not sufficient faith in human nature.

Q. You distrust each other? A. I would not put it that plain—ordinary business methods.

Q. If the pooling agreement was abandoned so that mem- 1259
bers of the pool here were not interested in the amount of the freight that was sent from this port so as to get their commission why should they continue reporting back to the conference? A. In working in harmony in the matter of rates and operating in the trade as we are doing to-day it is the customary procedure to do everything above board and where everybody else can see it.

Q. Isn't it pursuant to this general agreement that obtained between these conference lines that they shall operate so that they shall charge uniform rates. Isn't that the idea? A. We operate in harmony and charge uniformly. 1260

Q. You report to the conference these contracts—all contracts? A. That is a natural sequence.

Q. "Natural sequence"—what do you mean—yes? A. I cannot catch the question.

Q. You testified that you still report to the New York conference all of the contracts for freight that you make to the Brazilian ports. Is that right? A. Yes.

Q. You have testified that the pooling agreement that provides for the division of the pool into three parts has been abandoned? A. That is correct.

Q. Is it not a fact that the reason you still keep report-

1261 ing to the conference is due to the general agreement or combination between the various lines—the defendants in this suit—so that you can see that the provision for uniform rates is maintained?

MR. BURLINGHAM: I object to that on the ground that the question involves the consideration of the agreement and there is nothing whatever in that agreement about reporting the contracts, and the witness has already stated the reason why they report the contracts.

1262 WITNESS: I think the documents speak for themselves. In connection with the answer to that, I must take objection to your insinuating that there is an existing formal agreement as regards rates. That is the reason why everything is put above board.

Q. Do you say upon the record that you cannot answer that question? Yes or no? A. I would like to hear the question again.

1263 Q. Is it not a fact that the reason you still keep reporting to the conference is due to the general agreement or combination between the conference lines—the defendants in this suit—so that you can see that the provision for uniform rates is maintained? A. Your question implies that a general agreement is in operation. My understanding is that it is not, consequently your insinuation and your question have to be qualified.

Q. Is it your understanding now that whatever agreement was in force between the conference lines concerning rates the establishment of uniform rates is no longer en-

1264 forced? A. There is no formal agreement in force—that is my understanding.

Q. Is it your understanding that paragraph 5 of Exhibit 1 to the effect that "The rate of freight on coffee to be fixed in conference at the highest possible level, no alteration to be made therefrom except by mutual consent. No 'Cut' rates or discounts of any kind whatever to be given or allowed except such as may be provided for hereafter. The rate of freight on all other articles except on sugar from the Northern ports also to be agreed upon and adhered to." That is no longer in force between the conference lines? A. I have no knowledge of that agreement.

Q. You testified before the House Committee at Wash- 1265
ington recently? A. Yes, I did.

Q. You there made the statement you thought that agreements had been abandoned? A. I did.

Q. Did you afterwards ascertain that that was not true? A. I did not.

Q. Were you a party to sending a cable to London to ascertain whether it was in force or not? A. I was not but——

Q. I mean Liverpool? A. No, but you mean Newcastle.

Q. You knew one was sent? A. I certainly did. 1266

Q. Didn't you know that Mr. Kirlin, Counsel for one of the defendants in this suit, had telegraphed to Mr. Knott at Newcastle-on-Tyne, for information? A. He telegraphed, as I understand it, after consultation with me.

Q. Was this the context of the telegram that Mr. Kirlin received? "As far as we are aware, agreement not been terminated except so far as pooling agreement and rebate system downward concerned." That is from Mr. Knott? A. That is the reply Mr. Kirlin showed me as having been received from Mr. Knott.

1267

Q. In view of that telegram, do you say that you have no knowledge, or that it is still your belief, that this agreement is still not in effect as to everything except rebates outward and the pooling agreement? A. My understanding from my people is that there is no agreement in effect.

Q. You say your people. You mean the Lamport & Holt Line? A. Yes.

Q. From whom have you received information of any kind?—from whom connected with the Lamport & Holt Line have you received any information that this agreement—Exhibit 1—with the exceptions I have mentioned, 1268
is not in force? A. That has been my understanding from what I have seen—it has been an understanding of some time with me.

Q. I asked you from whom? A. I cannot recall but I presume it would be from Messrs. Cook and Melly.

Q. Have you any correspondence of any kind that would indicate that it has been abandoned, except what I have mentioned? A. No, that I cannot find in file.

Q. After you went to Washington and testified and then this cablegram was sent from New York—have you made any search of any kind? A. Yes. I have told our people

1269 that there has been some misunderstanding among the principals.

Q. What answer did you get to that? A. I have not received an answer.

Q. In view of that telegram that was sent in response to Mr. Kirlin's cablegram that—with these exceptions still in force—do you still say the agreement is not in force? A. I can only say from my own personal knowledge—that there is no difference between the proposition. I had occasion to look the cable over, very carelessly, to see what
1270 questions might arise. The language at the end of it is very ambiguous. It might be construed to terminate at the end of a year.

Q. You mean "signed by Knott subject to the confirmation of the Prince Line. 30th June, 1908." That is the period you refer to? A. Yes.

Q. You had one in 1909. It was in force and effective? A. Operated under the pooling agreement for a year.

Q. The whole agreement was in force in 1909? A. I cannot answer you. I am not a principal.

Q. You said there was something ambiguous in the way
1271 it appears to be signed by Mr. Knott "Failing such confirmation arrangement so far as Prince Line concerned to run for one year." How would that have any bearing on whether or not the Lamport & Holt line was running under an agreement? A. I cannot discuss how my principals might view the matter. It does not interest me.

Q. The fact is that you were holding conferences in the same office in New York—weekly conferences—from practically the date of Exhibit One up to the present time? A. We have been holding conferences, yes.

1272 Q. You have been fixing rates right along? A. Yes.

Q. Admitting the German tariff or European tariff as the base tariff for the American tariff to Brazil ports? A. Yes.

Q. If you had an idea that the agreement was abandoned, why then would you be in conference with the other two lines? A. It is the natural working of any trade. We work in harmony.

Q. Your understanding then is that it is the natural way to work in harmony—that it was not done in pursuance of any direction—just getting together in the usual way? A. An informal way, yes.

Q. If it was so informal that the Hamburg-American 1273
Line made the agreement with the Singer Sewing Machine Company, what was there about this informal method of doing business that allowed them to make a contract fixing a rate in which the Lamport & Holt Line and the Prince Line agreed about? A. Because working in conference we made these rates. That is, we take large contracts on third responsibility.

Q. What do you mean "third responsibility?" A. I mean if there is a large contract it has to be under-written and if it is larger than any one line can carry it is specified 1274
that each line assumes a third liability.

Q. Under the contract? A. Either under the contract or among ourselves.

Q. Do the Singer Company have shipments of such a size that the Lamport & Holt or the Hamburg-American could not take care of them? A. I think although there is no formal provision regarding that particular contract—its volume is not very large—that it is understood that when the lines get a share of the business they are under responsibility for lifting a specific one-third of it. 1275

Q. What contracts are there that you can now recall in which there is such an under-writing as to be divided into three parts for responsibility? A. We have a contract for thirty thousand tons of rails—you will find it recorded in those records.

Q. Who from? A. United States Export Company—loading February or March, last year. It is specifically agreed that each company will assume one-third responsibility both as to lifting and the execution of the contract.

Q. What other? A. The contracts are on the records 1276
there.

Q. I do not care whether it is on the records or not. A. Some cars in the name of the American Foundry Company.

Q. When was that contract? A. It covered a number of thousand tons which were divided into third shipments and third liability, and there was also a Standard Oil contract.

Q. What was the date of that contract? A. I do not recall it without looking at the records, but it was also divided into third responsibilities.

Q. That is due to the fact that neither line would be willing to guarantee facilities to take the whole shipment—is that the reason? A. Practically.

1277 Q. Not due to any arrangement under any conference? A. No, I think one goes with the other. In a trade when three or four lines work in harmony a big contract would swamp any one of them. I think it is part and parcel of the harmonious working of the trade.

Q. Harmonious working of the trade? A. Nobody except the Hamburg-American, the Prince Line and Lamport & Holt. Those are the only ones that take the joint liability.

Q. When you speak of working in harmony with the trade you mean with these people, who are parties defendant to
1278 the suit? Yes or no? A. Not a necessary party defendant to the suit—but to the three lines.

Q. If there was only some question of harmony coming out of the general course of business, why is it that the New York conference, or the members of the New York conference, referred back to the London conference for authority to fix rates? A. That is only a matter of organization.

Q. Pursuant to an agreement? A. It has to be done in some place.

Q. It is pursuant to an agreement? A. There is an agree-
1279 ment or understanding—yes.

Q. What is the understanding? A. My understanding is that in the Brazil trade there is an agreement between the lines that they will work in harmony, agree and maintain the same rates and handle the trade as may be mutually advisable and economically possible from their standpoint and to the advantage of the trade.

Q. Your idea is that that is not pursuant to an agreement with reference at least to fixing the rates under the provisions of Exhibit one. A. I think the provisions are prac-
1280 tically the same without a formal agreement.

MR. BURLINGHAM: I wish to state that as far as the Lamport & Holt Line is concerned, we do not deny that the lines are working in co-operation substantially on the same basis as provided by Exhibit one with exceptions, and as I understand it, Mr. Daniels' position is that according to his information the former arrangement without an agreement but with practically the same terms that then existed is still in force. It seems to me foolish to keep it up forever on the subject. That is all I am saying it for.

MR. BALDWIN: Mr. Burlingham, does your statement embrace all the provisions of Exhibit one except outward rebates and the Pool? 1281

MR. BURLINGHAM: There is no provision in Exhibit one for a pool.

MR. BALDWIN: Exhibit one and Exhibit two are in force and effect?

MR. BURLINGHAM: Certainly not. The Pool has absolutely terminated.

MR. BALDWIN: Except the pool and the outward rebates? 1282

MR. BURLINGHAM: I cannot say. The testimony is voluminous. There has been a lot of evidence on the subject and I cannot say what is in effect and what is not in effect. I refer you to my answer and we will stand by it. I do not want to limit your cross-examination.

MR. BALDWIN: (To Witness): Was there an agreement in effect or operated under in the New York conference that there was to be an arrangement in the conference lines so that their representatives would make a contract with one certain line of trade for one month, and then be succeeded by the agent of one of the other lines, and so on until each one had participated? A. I think that was proposed but I do not think it was ever attempted. 1283

Q. Wasn't the oil trade divided up on that basis? A. Not to my recollection—in any instance.

Q. To your recollection that was never done within those points? A. Within those points. Yes. I testified the other day—— 1284

Q. You said on page 457 of your testimony: "Q. Is it not a fact that oil rates—that is to say, rates for the shipment of oil from New York to the Brazilian ports, is placed entirely in the hands of one agency for all these conference lines? A. No, sir. Q. That is not true? A. No, sir. Q. Well, do they place them in the hands of one agent for any period of time and then alternate? A. I think you have got back history somewhere. Years ago they had that in some of the trades, but it was very long ago. Q. Since

1285 1907? A. Not to my knowledge." That testimony is right? A. Yes.

Q. I show you page 25, dated September 2nd, 1908, Minutes of the New York conference. It is entered—"Under the authority from the principals to vary case oil rates up and down, with a minimum of 16 cents, it was decided to carry out this policy, it would be desirable to put the negotiations for case oil for all the lines periodically into the hands of one of the agents for thirty days and under this decision Messrs. Funch, Edye & Company were appointed
1286 to act for the purpose from August 24th until September 24th. Messrs. Funch, Edye report that under the above arrangement they have booked." Then follow the bookings on various steamers. Looking at that memorandum, does that refresh your recollections as to whether or not they have made such an arrangement since 19 A. I seem to have been mistaken. I do not think it l long.

MR. BALDWIN: I offer page nutes of the New York conference f , 1908, to April 28th, 1909—date mber 2nd, 1908.
1287 Marked Petitioner's Exhibit o. 162.

Q. Was not the minute in this Exhibit 162 to vary the rate up and down from 16 cents pursuant to a cablegram received from your principals? A. Apparently so.

Q. In other words, you sent a cablegram dated August 19th, 1908, to London conference "We are considering advance case oil twenty cents but vary rate up and down maintaining sixteen cents minimum and as it is a matter at the same time affecting Lloyd would like your appro-
1288 val," and the answer thereto, from that office dated August 24th, 1908, was "Approved of your suggestion"? A. Yes.

MR. BALDWIN: I offer the two cablegrams in evidence. (Marked Petitioner's Exhibit 163.)

Hearing adjourned until 2 p. m.

AFTERNOON SESSION. 1289

LORENZO DANIELS recalled.

DIRECT EXAMINATION by Mr. Baldwin:

Q. Was not the reason for suggesting to the London conference that you be allowed to vary the rate up and down from sixteen cents a cubic foot due to the fact that you did not want the Lloyd Brazileiro or other competitors to know what your fixed rate was? A. I think at the time if we had a fixed rate that they would cut it just a fraction of a cent, and the idea was to change it from being a fixed 1290 rate from time to time; from being an uncertainty.

Q. Then you would answer my question yes? A. Yes.

Q. In other words, it was the sense of the conference here that in view of their possible competition or possible competition from outside lines that you would have a fixed basic rate, and you were allowed to vary it up and down to meet whatever they might quote? A. No, not what they might quote; simply if we had a fixed rate they would undercut us a fraction, and our rate would be established, and that would be a free rate.

1291

Q. Well, you wanted to have some latitude with which to meet competition, didn't you, that was the reason for this suggestion—yes or no; if he can answer yes or no? A. It was not necessarily a latitude to meet the competition that way, but to prevent our being held at the fixed rate.

Q. You wanted some latitude if you found yourself in competition with others outside of your line? A. Our idea was to have a latitude ourselves; to have a rate that was not fixed.

Q. Mr. Daniels, on page 41 of the New York conference 1292 minutes, under date of September 23, 1908, I find an entry in the following words: "Referring to paragraph 51"—that is Exhibit No. 162 which authorized Funch, Edye & Company to make a contract for the period from August 24 to September 24—"the Prince Line agents are authorized to operate the oil policy for the next thirty days, following the agents of the Hamburg Line"; you recall that in pursuance of that, the Prince Line was authorized to take over the oil business for the benefit of the conference? A. I should put that construction on it, yes, sir.

Q. I find on page 64 of the same minutes under date of

1293 October 28th, 1908, under heading, "Case oil engagements, Paul F. Gerhard, following bookings," stating the steamers and the numbers of cases and concluding as follows: "Messrs. Busk & Jevons will handle oil trade in November account for the three lines." That entry was made, was it not, pursuant to this general agreement that for each calendar month in rotation, each one of the three conference lines would have the sole management of that oil trade? A. I presume so.

Q. It was the practice for each one of the conference
1294 agents, during the calendar months that they were having sole control of the case oil engagements to report back to the conference the boats and also the amount of the commitments in oil? A. I think so.

Q. Do you remember or not whether sometime in 1908 they provided among themselves that all of the business, with certain exceptions, was to go in rotation to the agents of each line? A. What do you mean by "all of the business"?

Q. I will put this question to you; I call your attention to page 72 of the said minutes under head of November
1295 11, 1908, paragraph 149, and ask you if you recollect that entry there? (Handing witness book and indicating.) A. May I look further.

Q. Look at anything you want to; I just want you— A. The record appears to be there; I don't recall its operation.

MR. BALDWIN: I offer in evidence paragraph 149 on said page.

Marked Petitioner's Exhibit 164.

1296 Q. It was resolved "that all contracts excepting bookings for specific sailings shall be handled by each of the agents in regular turn; in such instances where one of the agents appears specially suited to handle an inquiry, such agent shall be authorized, although not in turn, provided the other two agents so agree; case oil engagements to be handled in turn by each agent for the period of one month as at present." Now, it became the practice then, did it not, at or about that time that, with the exception of booking for specific sailings, all of the business should be handled in turn by the agents of each line, for each month? A. I don't recall that that was operative.

Q. Don't you remember anything about it? A. I re- 1297
member, as I said before, the suggestion was made.

Q. Made and passed and agreed upon? A. I don't recall to that extent, but I do not think it was operative. Will you allow me to ask Mr. Gottheil.

Q. If you have no recollection, just say so? A. I want to testify to the facts. If Mr. Gottheil can refresh my memory; he is present.

Q. To the best of your recollection? A. To the best of my recollection, it was not operative.

Q. Your recollection with reference to case oil shipments 1298
that continued in turn for each line? A. I understand it was only for a short period it continued.

Q. Mr. Daniels, can you tell me whose handwriting paragraph 149 on page 72 is in; the one I just read? (Handing witness book.) A. I think it is Mr. Gottheil's.

Q. Now, I show it to Mr. Gottheil in your presence. (Mr. Baldwin hands Mr. Gottheil book.)

MR. GOTTHEIL: That is my handwriting.

Q. Now, from the statement made by Mr. Gottheil, you 1299
recognize his handwriting? A. Yes.

Q. I show you the entry 224 on page 106, under date of January 6, 1909, and ask you in whose handwriting that is? (Handing witness book.) A. That is my handwriting.

Q. Now, having looked at this memorandum, in the conference minute book, and calling your attention to the fact that it refers back to 149, the entry made on page 72 that I have just read to you, that the Exhibit No. 164 which provides that all of the contracts excepting certain contracts therein mentioned, shall be handled in turn; are you not prepared now to say that did continue in force, right down to 1300
the 6th of January, 1909? A. I think if you will read that; let it go on the record.

Q. Can you read it yourself, and state whether or not it did continue in force, and was operative?

MR. BURLINGHAM: Until January, 1909?

MR. BALDWIN: Yes, until that date.

THE WITNESS: The record——

Q. I ask you to look at it, and see whether you can state whether that agreement really was operative down to that date, at least?

1301 MR. SPOONER: Perhaps he was going to answer it.

THE WITNESS: I adhere to my previous statement; that I do not think that the proposal was operative.

MR. BALDWIN: I will offer in evidence this memorandum on page 106.

Marked Petitioner's Exhibit No. 164-a.

Q. Now, referring to paragraph 149, the Lamport & Holt Line record, "whereas, the general policy of a fair division of the pool part trade is recognized as desirable, it is found
1302 inexpedient to make hard and fast rules, they withdraw from the paragraph." It says "withdraw from the paragraph."

MR. BURLINGHAM: Paragraph number 149?

THE WITNESS: That is what it refers to, 149, of course.

Q. Can you look at page 72, Exhibit No. 164, and state what part of the paragraph 149 they withdrew from? A. We stated we withdraw from the paragraph, meaning the
1303 entire paragraph, I presume.

Q. You mean to say from it in the entirety? A. That would be my understanding.

Q. Each one of these separate entries appears in the book but have a separate number as a paragraph? A. Yes, sir.

Q. Now, having read that provision which refers to withdrawal from 149, don't you know, Mr. Daniels, as a matter of fact, that you did operate under 149, down to that date? A. I don't think we ever operated under it, sir.

Q. If you didn't, why was it that you would have a specific withdrawal on the minutes of the conference? A. As
1304 a matter of reference; as we stated, because the other was on the record, without notice of time. How much time has elapsed between those two?

Q. This is January 6th, 1909 and the other was November 11th, 1908.

MR. BURLINGHAM: Two months.

MR. BALDWIN: A little over two months.

Q. The only reason then, that you made this specific withdrawal, was for the fact that on the preceding date, that there was upon the minutes a provision that all of the

business with the exception of those noted, was to be in 1305
rotation? A. That is what I presume.

Q. And not because you ever operated under it? A. That was my understanding, yes.

Q. This withdrawal, as you understood it, did not apply to the oil contract, did it? A. I don't know whether the oil contract had expired at that time or not, but I should say in general, that it applied more to the general principle involved in the other suggestion.

Q. You remember, don't you, that 149 still continued the oil contract, just as before? A. Yes; we were parties until 1306
the record showed we discontinued.

Q. Did not the provision with reference to rotation to the three agents for the oil contract, continue right along despite this withdrawal that you have on page 106? A. That I cannot recall—I have forgotten the instance entirely.

Q. I call your attention to page 115 of the minutes, January 20, 1909, paragraph for Gerhard Company, "Gerhard Company report the following: steamship *Tennyson*, February 5, 5,000 cases, Bahia, at thirteen cents C. S. F. F. A.; 1,300 cases Bahia, fourteen cents F. F. A., steamboat *Italian Prince*, February 25, 1,500 cases, Bahia, fourteen 1307
cents, F. F. A." Does that refresh your recollection so that you can say that as far as the oil contract is concerned, that provision still continued? A. I should consider that the first paragraph referred to the general practice. As far as the oil is concerned, it lasted, I understand not a very long period, and as the record will show, we stated the facts.

Q. I call your attention to the minutes, January 22nd, 1909; does not that refresh your recollection, so that you can say, up to that time, the arrangement continued in 1308
conference? A. The oil contract continues according to the records, whatever the records are.

Q. About the latter part of January, if there was any interruption in the provision, or the order of business with reference to the oil contracts, it was resumed, was it not? A. I have forgotten entirely as to oil. I understand it did not last very long.

Q. Was there an interim? A. The old method of each line working for itself was resumed and the other agreements terminated. What date was that?

Q. January 27, 1909? A. Then the oil agreement ter-

1309 minated—the oil arrangement of single bookings terminated at that time.

MR. BALDWIN: I offer in evidence paragraph 260, page 119 of the minutes of January 27, 1909. Marked Petitioner's Exhibit No. 164-b. It reads as follows: (Mr. Baldwin reads) "Case oil bookings. It is agreed that the old system of each agent working case oil for their outgoing steamers, after consultation and agreement as to rates, with the other agents, be resumed. Negotiations for the
1310 contracts for the future boats to be conducted by any agent receiving the enquiry after agreement as to rates and conditions." After this date of January 27, 1909, what was done with reference to the oil shipments? A. Exactly as the record shows. Each line traded according to enquiries they might receive.

Q. After that, but did each line still continue to report back to the conference as before the amount of the ship-
1311 ments and their contracts? A. The bookings for their own steamers.

Q. That is, during all that period of time that we have just covered by which there was a rate for each calendar month, for the oil shipments, that one agent would report at the conference whatever contracts he had made; is that right? A. That is the way the record shows.

Q. Then, after this letter of—I mean paragraph 260 under date of January 27, 1909, you continued, or rather the practice was that each line made its report separately to the conference of just what the commitments in oil were.
1312 We discontinued the single agent booking for all the lines, and each line took any business they wanted to.

Q. And would report back? A. And would report back just the same as any other contract.

Q. That is, they made no exception? A. No exception.

Q. So that the general practice of reporting all commitments outward on the various lines were all reported back to the conference at the next meeting? A. It was resumed, and that was the precedure followed after that date.

Q. The practice that you testified to before—the arrangement was made for one agent to act for each calendar month in determining the rates in advance also was re-

sumed in conference? A. I think I can answer, yes, if I 1313
understand the question correctly.

Q. That is to say, that the rates for each calendar month —we will say? A. No, not at all; the rates for each specific booking.

Q. But those rates for any period of time—we will say within the calendar months, were all subject to conference, were they not? A. The going rate for a contract was subject to an agreement among the lines.

Q. And the practice of order of business of reporting back to the conference these commitments has continued 1314
right down to the present time? A. Yes.

Q. And the rates likewise down to the present time have been agreed upon in conference? A. Yes, sir.

MR. BURLINGHAM: Now, explain.

THE WITNESS: Allow me to qualify that answer; we agreed in conference—agreed between the New York conference and the London conference as a whole.

Q. Now, during this period of time that you were agree- 1315
ing upon rates in the way you have testified, did the conference here consider the rates that were being quoted by your competitive lines, the Lloyd Brazileiro, and the other lines? A. We naturally would.

Q. And were the rates authorized upon your suggestion or suggestion of the London conference changed from time to time, so as to meet the competition of the Lloyd Brazileiro, and other competitors? A. Not necessarily, because our rates, as a rule, have been fixed rates, made regardless of competition. What we could offer to get the business.

Q. Now, with the exception of cable instructions of Au- 1316
gust 8, 1908, to vary the rate of sixteen cents up and down, and the authority that you got from time to time, as you have testified, to make lower rates then than the fixed tariff, did you have any other authority whatsoever to change the rates so as to meet competition? A. I think the rates after the time you mentioned, were fixed by us irrespective of competition, or what any competitor might underquote us, but at the same time, they must necessarily be fixed with regard to the market value, which is controlled more or less by competition, and the value of tonnage.

Q. Did I understand you to mean that your fixed tariff

1317 was ever based upon what the competitor's prices were here in New York? A. Our tariff has been more generally fixed on the competitive tariff abroad, and we have ignored the competition that existed here in New York.

Q. As a matter of fact, Mr. Daniels, in actual practice, the rates which you established and agreed upon either under instructions from the London conference or by instructions from your principals, where it was less than the published tariff—I mean this minimum tariff that you have identified, was based entirely upon recommendation that
1318 you or your conferees here would suggest to the London conference, is that not so? A. No, the reverse; the London conference, which was the owners of the lines adopted a policy that they would maintain a tariff that was fair, fairly remunerative, irrespective of whether they received the shipments, or whether the shipments went by any competing steamers.

Q. And the owners of the line—we will call the London conference, arbitrarily determined this without consultation with you, or taking into view your recommendations,
1319 or the conditions of the New York market?

MR. BURLINGHAM: It is not an assumption of arbitrariness.

THE WITNESS: They determined the prices at which they could run their boats.

Q. But they did not consult you or the conference in New York as to the minimum tariff that they would establish from New York to Brazil? A. On very rare occasions they may have, but as a rule they did not.

1320 Q. You already testified a moment ago that the rate here was in a certain sense at least, affected by the value of the tonnage; is that it, Mr. Daniels—the value of the tonnage of a competitive market here; now, I ask you if it is not a fact that those two items were not considered at all by the London conference in fixing the rates from New York to Brazil? A. In my opinion that must have been; I cannot say what influenced the people abroad, but in my opinion that would be a natural inference.

Q. Now, would you, before they would fix a tariff, indicate to them the conditions here? A. In some instances.

Q. How frequently? A. The cables that you have will show, but rather infrequently.

Q. Very infrequently—but the general practice was for 1321
the owners of the lines at the London conference to establish such rates as they saw fit, regardless of conditions obtaining here in New York; is not that the general practice? A. I should say with a natural consideration of conditions and values that that would be the general practice.

Q. Now, I repeat the question and ask you whether or not you can answer that yes or no? A. I could not answer yes or no without qualifying.

Q. Now, when you speak about general conditions, what do you mean by that? A. I mean that general conditions of 1322
value and shipments must necessarily enter into any decision that the owners may come to as to rates.

Q. How would the question of value be determined by conditions in New York? A. There has always been the open charter market, showing the value of tonnage, and if the lines wanted to be in the business permanently, they could not establish their rates above the open value of tonnage and maintain them.

Q. Do you know of any particular instance where a fixed tariff was arrived at at the conference and adopted here at 1323
the New York conference when there was this condition that you speak of? A. This condition is a present condition, always.

Q. And then there is a condition that obtains generally here in New York, by which there are carriers open and ready to transport merchandise from here to Brazil? A. Always.

Q. And what do they consist of? A. Tramp steamers.

Q. Do I understand you to say that anybody maintains a regular service from here to Brazil other than these 1324
conference lines at the present time, outside of the Lloyd-Brazileiro? A. There are two or three speculators that put on boats wherever they think——

Q. I ask you, Mr. Daniels, whether there are any regular lines operating from here to Brazil, other than the Lloyd-Brazileiro? A. No, I should not call them anything like a regular line; they are regulators of the trade.

Q. The tramp steamers make it a point, do they not, to get complete cargoes down, or as near as possible? A. No, sir, not if they are taken by any operator of tramp tonnage.

Q. How many steamers are called or offered here in New

1325 York in the year 1912, just passed for the Brazilian market? A. In the year 1912 there have been—I should say half a dozen.

Q. All told? A. Tramp steamers loaded and sailed with general cargo in the market.

Q. From New York? A. Some from New York.

Q. How many from New York; I am speaking of the New York market? A. Three or four from New York and the other steamers are offered in New York, and sail from other ports to come to New York.

1326 Q. How many went from here in 1911, as near as you can recall? A. I could not give you a fair answer, without getting up data.

Q. Do you mean to say that those tramp steamers would ship to prospective shippers in New York and that that affected the rates that the London conference fixed in their schedules? A. That must necessarily effect them.

Q. Do you know of your own knowledge whether or not, or are you assuming it? A. On general principles I am assuming it.

1327 MR. SPOONER: In fact you know it.

THE WITNESS: I know that to be a fact.

Q. Now, assuming that there were three of those tramp steamers in 1912, what would their total capacity amount to? A. Oh, their capacity is about 6000 tons on an average.

Q. Each? A. Yes.

Q. Assuming that there would be 18,000 tons available for shippers to the Brazilian ports in 1912; I am asking you yes or no, if you know of any advertised offers of

1328 tramp steamers in 1912—do you know of any? A. I know that steamers are constantly offering for the business if they can get it.

Q. I am asking if you know of any? A. Yes, I know that to be a fact.

Q. Now, I again ask you how many there were—of your own knowledge, that you can speak of in 1912? A. I should say in the neighborhood of half a dozen that actually went.

Q. Assuming that there were half a dozen, didn't those steamers offer practically for goods in bulk, and not otherwise? A. They solicited all kinds of cargo.

Q. Now, do you recall any one of them that made any

offer of any of the commodities fixed in this schedule, your- 1329
self? A. I know that they have offered through the market for those commodities, yes, sir.

Q. Assuming that there were six of an average tonnage of 6,000 tons, which would be 36,000 tons of tonnage, do you mean to say that that percent, or that amount of available tonnage, or space, would affect the London tariff, and be considered by them? A. If there was an opportunity between the basis of the London tariff and the basis that the others were operating on to make the average of the tramp boats a success, it must necessarily affect the entire tariff 1330
of the regular line.

Q. I am asking you if you know anything about it? A. I know that it would.

Q. And you know that it did? A. Yes.

Q. Do you mean to say that these desultory tramp steamers going out of the Port of New York and offering at the Port of New York to carry commodities to the Brazilian ports cut a figure in affecting the tariff rates fixed by the London conference adopted here? A. It must necessarily. 1331

Q. Do you know whether it does—I didn't ask "must necessarily." Have you any knowledge; if you have any knowledge state what it is, and where you got it? A. My information is general business practice—general business principles, that if our rates are so high that others can operate below them, they are found to be effective.

Q. You keep pretty well in touch with the rates fixed by the Lloyd-Brazileiro, don't you? A. Absolutely do not, except in a general way, I understand they follow our rates within a few cents. 1332

Q. But you don't pay any particular attention to that yourself? A. No, we do not.

Q. So that the rates fixed by the Lloyd-Brazileiro would not be considered by the London conference in fixing their tariffs? A. Not necessarily, because there is not a margin of profit in the business.

MR. BALDWIN: I ask to have that stricken out as not responsive; I asked him whether he considered the reasons for it.

Q. If the Lloyd-Brazileiro operating a more or less regu-

1333 lar service from New York to the Brazilian ports, having a tariff is some sense at least, less than that fixed by the conference lines, does not affect the tariff as established by the London conference, how do you account then, that they would take into consideration rates offered by these desultory tramp steamers? A. Because they are all on the same general line of business that we figure that if any line offers rates that are not remunerative it is a losing business, if there is a margin of profit in the business—if our rates are so high as not to leave an open margin of profit,
1334 we are naturally in a dangerous position. If they are not remunerative we are in a dangerous position.

Q. If the tramp steamers are not based on the element of profit, then why would the conference lines consider their rates at all? A. They are all based on an element of profit.

Q. Well, if the Lloyd-Brazileiro is slightly below this, what difference does it make to the London conference in establishing rates, whether or not there is no profit in it to the Lloyd-Brazileiro? A. We don't pay any attention to it; we feel that our rates are only at a fair basis of profit,
1335 because we know that the other man cannot operate profitably.

Q. Do you pay more attention to the rates offered by the tramp steamers? A. Only if we should find that the conditions were such that they would be able to make a profitable average.

Q. You pretend to know, do you, whether or not a tramp steamer in quoting a rate can do it at a profit? A. We absolutely know, because we operate a great many tramps ourselves.

1336 Q. Now, Mr. Daniels, do you know in 1912 the rates of any of these tramp steamers that you can now speak as to what they were, as compared with the prices quoted by the conference lines? A. I do not know definitely, but I know they have solicited freight and I presume they have named rates, but I do not happen to have them in my own mind.

Q. Did you make it a part of your business to ascertain what rates they made in 1912, these six or more that you have spoken of? A. I presume that some of our officers must have had the information from shippers.

Q. Did anybody from your office that you know of com-

municate the rates of these tramp steamers to the London conference? A. Not to my knowledge. 1337

Q. Then, if, as you say, the London conference must have had in mind and considered what these tramp steamers were offering in New York to affect the tariff established in London, where did they get that information from if you did not communicate with them? A. They know what it costs to operate; they know what it costs when we put tramps on the line; general knowledge; they know the basis.

Q. General knowledge, then, instead of making up the rates in London based upon what is offered for competition here in New York by the tramp steamers; they take your experience in what you can take a tramp steamer and send down there, and use that as a basis of establishing the tariff in the London conference? A. No, sir, the London conference tariff is an open established tariff that we adopt here, but as I have stated to you previously, the base of that tariff cannot be so much upon the basis of values that anybody can operate successfully and profitably at cut figures. 1338

Q. Then, as a matter of fact, Mr. Daniels, what is offered here by tramp steamers, or otherwise, is not considered by your London conference, but they fix for their own purposes, and in their own way, figure up what they can carry this freight for; is not that it? A. To a large extent, yes, sir. 1339

Q. And don't communicate, and you don't know of anybody in your employ that communicates to the London conference what is the condition of the London market? A. We would report that these steamers are in the market loading cargo and soliciting freight from the general shippers. 1340

Q. Would you state what the rate was? A. I don't think, to my recollection, that we have stated the rate other than on staples.

Q. The only thing that you would communicate was that a tramp steamer was here; was offering its service, and give perhaps the possible tonnage of the boat, and beyond that you would not communicate anything? A. Yes, we would advise that most of these steamers had been put on with a base cargo; I mean by that, that a number that I have in mind have gone with cement as a base, and they

1341 have offered the balance of their room. Some have gone with rails and locomotives as a base; they have solicited for general cargo in market.

Q. But you would not concern yourself with what rate they charged and would not report that back would you, to the London conference? A. We generally reported the rate that we knew on the base goods.

Q. Mr. Daniels, if you did not make any enquiry as to what rates they charged, and you didn't know that anybody in your company did, how could you report back?

1342 A. We generally report the base cargo—what they quote for cargo they don't secure, we don't know.

Q. If you only reported what you call the base rate for something like cement which you got in some way to the London conference—the London conference would not know and would not consider what their offering would be for other cargo, not what you call base? A. They would just be advised of the fact that they were trying to make bookings.

Q. But you would not know the rate and would not

1343 report it? A. I don't think we have.

Q. If that is so the London conference never could have taken into consideration what the market was or anything else except this base rate? A. I don't agree with you there.

Q. Well, Mr. Daniels, you did not report to the London conference what the rates were, and you did not know what the rates were outside of what the rate was for cement—how could the London conference know what these steamers were offering for the balance of their space? A. They took it for granted that they were offer-

1344 ing for less than we were—if they were not successful, it would make no difference.

Q. Then the London conference disregarded what their rates were? A. I didn't see any reason for changing it.

Q. Have you any recollection of any single or specific time that you ever reported back to the London conference the rate that any of these tramp steamers were offering—and if so when? A. I don't recall a case of any tramp steamer going on for her own account.

MR. BALDWIN: That is still not responsive.

MR. MONTGOMERY: The question is what you remember.

THE WITNESS: I am reporting what the charterers did, but not what the steamers themselves did. 1345

THE EXAMINER: I don't think the witness has the question yet.

By Mr. Baldwin:

Q. Do you remember any one instance when you reported such an occurrence to the London conference? A. We have reported——

MR. MONTGOMERY: He asks him if he remembers.

MR. SPOONER: The trouble is here, as I understand it, to speak of the tramp—and he speaks of the charterer tramp. 1346

MR. BURLINGHAM: He is making a distinction between the owner of the tramp and the charterer of the tramp. It is not necessary to bring that out; let him answer yes or no.

THE EXAMINER: The question is whether or not Mr. Daniels has any recollection of any time that he reported any instance to the London conference.

MR. BALDWIN: It don't make any difference whether it was by the charterer or the owner. I think he can say whether he has any recollection or not. 1347

MR. SPOONER: The charterer fixes the rate because he owns for the time being the ship.

MR. BALDWIN: I submit that that may be true—the question is whether or not he remembers ever having done this—that is all there is to it.

MR. BURLINGHAM: Answer yes or no if you can.

THE WITNESS: We have reported the rates. 1348

By Mr. Baldwin:

Q. Mr. Daniels, the question is do you remember a single instance when you did report that—if you can, state it? A. I cannot remember an instance.

Q. At the adjourned meeting, the other day, I asked you, Mr. Daniels, to produce here the rates for the certain specific years—have you got them? A. On what commodity?

Q. Did you make an examination to find if you had copies

1349 of any of these London minutes? A. We do not mark any copies.

Q. Mr. Daniels, when you spoke of other boats being offered here, where were those boats from, do you know? A. I don't gather your question.

Q. You stated a moment ago that in addition to these six or about six—that there were other boats that were offered here going from other ports and stopping here.

MR. SPOONER: They said they offered to come here.

1350

Q. You spoke of six boats, four were tramp steamers here, and as I recollect it, there were others that offered to come here from what ports do you mean? A. They loaded in Philadelphia.

Q. They would not come here unless they would get full cargoes? A. Oh, yes, they offered to come here for part cargo.

Q. Do you remember what boats they were? A. I don't recall their names.

1351 Q. Were they tramps or were they any particular line? A. They were chartered by Messrs. Hagar.

Q. Who were they? A. Charterers.

Q. Do you remember how many times in 1912 such boats were offered by the charterers? A. Do you mean these specific boats in Philadelphia?

Q. Yes? A. At least two times, possibly more.

Q. Do you remember the tonnage of those boats, approximately? A. I should say roughly from five to six thousand tons.

1352 Q. Now, in 1911, do you know of any such boats being offered? A. In 1911—I should have to refresh my memory from data.

Q. Do you mind giving the specific number for each one of these years that our records will show for 1912, 1911, 1910, 1909, and 1908—tramp steamers and boats offered just as you speak of, from Philadelphia and other ports by charterers; will you just make a minute of that, Mr. Daniels, or have you got the information there? A. Yes.

Q. Do you recollect of any time in 1912 that any of these charterers advertised those boats? A. They advertise them by word of mouth; whether they were advertised in the newspapers, if that is what you mean, I don't recall.

Q. Is not your recollection that was not the practice to 1353
advertise in any public papers? A. I don't recall.

Q. That is true of each year of those years that they did not make a practice of advertising? A. I don't recall.

Q. Don't you recall that the only information of their being offered at all was information you got casually in the trade? A. From shippers, yes.

Q. Have you any commodity that you can refresh your recollection so as to state whether they are offered for full cargo or offered for part shipment? A. They are offered for anything they can get. 1354

Q. Are you sure? A. Quite positive.

Q. Whether the amount was small or great? A. Yes.

Q. At page 482 of the stenographer's minutes in your examination the other day, you spoke of the Hamburg Line having put on what they call a fighting steamer to New Orleans—you remember that, don't you? A. Yes.

Q. That was during the period when this competition existed between these three conferees in 1907? A. Yes.

Q. And you also spoke about the Hamburg-American Line having withdrawn that boat—do you remember that? 1355
A. No, not the boat.

Q. Well, the service? A. Yes.

Q. Was not that withdrawal by the Hamburg Line of any of their boats off the New Orleans service in pursuance of this agreement, Exhibit 1 in the petition? A. That I could not state from my own knowledge.

Q. Is that your understanding? A. I think the inference would be such.

Q. And since that withdrawal, they have not run any of their boats in the New Orleans service at all? A. Not to 1356
my knowledge.

Q. Referring back a moment to these time contracts, can you state what ratio they bear to the total amount of tonnage carried by the conference lines to the Brazilian ports—I don't ask you, Mr. Daniels, to be exact? A. No, barring the large shipments such as I state like 30,000 tons, or 10 or 20,000 tons of cars, which involves a large volume of tonnage, the time contracts affecting the small trade are not very numerous.

Q. Well, of course, that in a general way answers the question, but I would like to have you—for instance, eliminate the Singer Sewing Machine Company—eliminate the

1357 contracts you have had with the United Steel Products Company, and the contract with reference to locomotives and cars that you have just spoken of, can you give us any idea about the ratio of the time contracts in tonnage, and the amount as compared with the whole tonnage? A. Of the general shipments—just simply general shipments—I should say a small proportion.

Q. Can you designate that in any way as a per cent.? A. No, I have no idea.

Q. Would it be as much as 10%? A. It would be a pure
1358 guess.

Q. No way to ascertain that? A. Not without going into elaborate figures. It is a simple proportion.

Q. Then the very large per cent.—major percentage of the traffic from here to Brazil, handled by the conference lines is subject to this minimum rate that you have established? A. The tariff?

Q. Yes? A. The proportion of tariff goods bears to the bulk volume of business is very small from the United States. The bulk stuff such as kerosene, rails, locomotives,
1359 is the largest proportion, by far, of the volume of traffic between the United States and Brazil.

Q. Now, what per cent. of that is based upon these time contracts, where you are allowed to go below the expressed minimum rate? A. Practically all of these contracts are rates from abroad; they are not any minimum.

Q. May be I did not quite understand your answer? A. Perhaps I can clear you up a little bit. We divide the traffic between what you would call coarse goods and fine goods. The bulk of the traffic to Brazil is coarse goods; the fine goods we call tariff goods.

1360 Q. What you call coarse goods—what proportion of that is made in pursuance to these time contracts is where a less rate than the minimum tariff is allowed? A. There is not a minimum tariff on that class of goods—they are all what we call special.

Q. Perhaps you don't understand my question? A. There is nothing in the tariff at all.

Q. You say they are not competitive? A. Yes, but they are not tariff goods; there is no rate against them; they are all special.

Q. Do I understand you that the London conference fixes the rates also for what you call the coarse goods? A. Yes,

Q. Now, are those rates uniform with all the companies 1361
—that is, the conference? A. We employ uniform rates, without discrimination.

Q. Now, what per cent. of what you call the rough goods are carried in pursuance to time contracts, independent of rates? A. A very large proportion.

Q. What per cent. or ratio of rough tonnage—what we call rough goods is carried under time contracts? A. A very large per cent. under time or specific contracts.

Q. Do you mean to differentiate between a time contract and a specific contract? A. Yes, a specific contract would 1362
be for 30,000 tons of rails—the same with regard to the cars that I mentioned.

Q. And they would go by different ships or several ships? A. They would cover quite a period, but a designated amount would go.

Q. Then you have two kinds of contracts with reference to these coarse goods, that by which they agree to send all their shipments for the period of time—the other is where they agree to send a certain amount of tonnage, to go at different times and possibly on separate ships—is that right? A. As specified, yes. 1363

Q. Now, would you make a concession to the person that would ship in large amounts, as to rates? A. No, we generally quote for the same class of goods the same rate at the same time.

Q. And the only way that you would make a concession from the rate that was authorized by the London conference is where they would agree to confine all their shipments to the conference lines? A. No, we have no discretion to make any concession below the rate quoted by the London conference; they make all the rates. 1364

Q. Where does the Lamport & Holt collect from the shippers for the freightage? A. Here in New York.

Q. Is that universally true, for instance, all people shipping from the New York port through the Lamport & Holt Line, make their payments here? A. Yes.

Q. To your firm? A. Yes.

Q. And that is true since 1907? A. Yes.

Q. During the time that the pool agreement was in existence up to 1909, did these agents for the conferee lines get their consideration for their service out of that pool?

1365 A. No—we charged our commissions direct to our respective principals.

Q. And since the time that you claim that the pool has been abandoned—how do you get your compensation? A. Direct from our principals.

Q. You send your statements, I suppose, of the total amount of business for a given period? A. No, each boat has its own account.

Q. Well, you send to them, I suppose, an account respecting each particular boat? A. Yes, sir.

1366 Q. Do you remit to them direct the total amount of the moneys received? A. We remit to them the balance of the account, yes, sir.

Q. Do you take your compensation out before you remit? A. As a rule.

Q. You send them the statement? A. Yes, sir.

Q. A balance sheet which shows the total business done; amount of moneys received, and the cost of doing business, including your charge? A. Yes, sir.

Q. But that was not the method of carrying on that end
1367 of the business between yourself and your principal during the time of the pool? A. Yes, sir, same thing.

Q. Same thing—was it? A. As I recollect.

Q. Then what effect, if any, did this pooling agreement have as affecting your compensation; was that an additional compensation? A. No.

Q. Well, in making up your balance sheet for the benefit of your principals, would you first credit them and charge yourselves for what you got for the pool? A. No, there was no pool kept on this side at all; no accountings here
1368 at all.

Q. Did your principal or the London conference make up the pool account? A. I presume they would.

Hearing adjourned to Thursday, February 13th, 1913, at 10.30 A. M.

New York, February 13th, 1913. 1369

Hearing resumed pursuant to adjournment.

Appearances:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham, Esq., for Frederick T. Busk, et al.

MESSRS. SPOONER & COTTON, by J. C. Spooner for Paul Gotthiel, et al. 1370

LORENZO DANIELS, recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Was it the custom of the New York conference after they had made up their minutes of their meetings to send copy of it to the London conference? A. We call them records. They were all sent to the London conference.

Q. They were practically duplicate records of the New York minutes? A. We call them records—not minutes. 1371

Q. I am calling them minutes—you can call them records if you wish, but you sent duplicate copies to the London conference? A. Yes, sir.

Q. And how often? A. Every time they were issued.

Q. What do you mean by issued? A. Every time there was a meeting.

Q. You had weekly meetings? A. Except when they came on holidays—weekly meetings.

Q. The practice was to have weekly meetings and then after the records or minutes were writtten out then a copy 1372 was sent immediately—or if not immediately, very shortly afterwards—to the London conference. Is that right? A. Yes, sir.

Q. Paragraph 224 on page 106 of the minutes, January 6, 1909, shows that the Lamport & Holt Line withdrew from paragraph 149. You remember that? A. Yes, sir.

Q. After that withdrawl—was it not the practice to have the agent to whom application was made for shipment, or contract for shipment, to carry on these negotiations and complete it for the benefit of all? A. As a rule, yes.

Q. That is to say, if enquiry should be made by a shipper

1373 say, of Busk & Daniels or Busk & Jevons the other conference lines would not participate at all in the negotiation but Busk & Jevons or Busk & Daniels would go and complete the contract—is that right? A. Providing the enquiry was made simply to one firm. Very often the enquiry was made to everybody.

Q. Would not the one that got the enquiry first then under the procedure carry on the negotiations and complete the contract? A. Not by agreement—among ourselves. There is generally a little competition to get the
1374 business.

Q. If simultaneous enquiries were made of all agents what would be the procedure? A. All of the agents would probably quote simultaneously the same rate.

Q. Would not one of them proceed under authority to complete for the benefit of all? A. No, there would be no agreement at that period at all except on rates, if that was necessary.

Q. On January 27th, 1909, on page 120 of the New York conference minutes I find the following: "It is agreed
1375 that any agent who starts negotiations on anything special, contract or booking after having the slip of authorization duly signed that agent shall continue the negotiations until concluding such contract or booking, without either of the other agents interfering with the negotiations." A. Quite correct. If the enquiry comes to a single agent.

Q. But in the event that the enquiry should be made simultaneously to the three agents—then what practice prevailed with reference to the making of the agreement? A. That will be referred to——

Q. Now, just wait a moment and answer my question—
1376 I did not ask you anything about that?

THE WITNESS: I want to hear the question read.

Q. And in the event that an enquiry should be made simultaneously of the three agents then what practice prevailed with reference to the making of the agreement? A. The shortest answer would be the way I started to tell you. I started to tell you in my own way—may I be permitted on the strength of my oath to tell the truth, to tell you according to my own way. The slip would be made so that all agents could be made alike in respect of a single agent.

Q. That would simply apply to quotations. What was 1377
the practice with reference to making the contract—who would make it? A. They would all make an effort to secure it, but the man who got it would get it. The next slip would develop, who was ahead.

Q. All would make an effort? A. Yes, sir.

Q. And the one that was fortunate enough to get it would get it. They would all bid upon the same terms? A. All bid practically the same, yes.

Q. There was not any understanding or agreement at the conference by which under those circumstances one 1378
agent would be authorized to close for the benefit of all? A. No one agent would be selected—no.

Q. Under that arrangement would the contract be signed by one for all or all three sign? A. There is no uniformity in the practice.

Q. There was not any agreement about that? A. There is no uniformity.

Q. In the event that any one particular agent should start the negotiations then under these provisions of paragraph 261 of the minutes he would go on and complete the contract for the benefit of all without any interference 1379
from them? A. He is allowed to go on and complete the contract but I do not know what the terms of the contract would be.

Q. It says here: "He shall complete the contract for booking without either of the other agents interfering in the negotiations"? A. That is quite correct, yes.

Q. If you had started negotiations with a prospective shipper you would report that at the next conference or would you inform the conference verbally or over the 'phone before the conference? A. The method of pro- 1380
cedure would require, if it was beyond the term of the tariff, which I think is three months, that we consult the other agents with regard to the terms to be named and so forth, but after the other agents would naturally understand that we were negotiating the business and it was not good form to try and get it away from us.

Q. Not only good form but under the provisions of paragraph 261 they would not interfere? A. It stands to follow we would not tell them if we thought that they would interfere with us.

Q. You said good form. Isn't it due to the resolution or

1381 understanding that was embodied in paragraph 261? A. It is the understanding among ourselves.

Q. Pursuant to that resolution 261? A. Nothing binds anybody to that resolution except the moral obligation to maintain it.

Q. If the conference agents adopted a resolution of that kind you do not consider then that is binding at all upon them? A. Only morally.

Q. It depends on their status of morality whether they would adhere to it? A. Yes.

1382 Q. After this resolution of paragraph 261 you did adhere to what you had agreed upon at that time—that where one agent had started negotiations, that the rest would not interfere? A. If they were exclusive negotiations. That is practically adhered to but with a margin or suspicion.

Q. I suppose each one in turn had more or less suspicion —pleasant relations? A. Quite right.

Q. They maintained this policy practically under these provisions of paragraph 261, for about how long? A. It is in force today.

Q. Up to the present time? A. Yes.

1383 Q. Do you remember that in the early part of 1909 there was some discussion in the New York conference as to how the form of contract should be adopted and how that should be signed? A. I recollect it in general but not in detail.

Q. Do you recollect whether or not that on or about February 10th, 1909, at the conference a blank form providing for the important parts of the contract was submitted, which should be the form that thereafter should be used? A. I do not recollect but if you have a record of it—I presume that is so.

1384 Q. I show you page 130 of the minutes under date of February, 1909. Is that the form as it appears there that was submitted to the conference? A. I think it must have been.

Q. Do you know whether that form was submitted or not? A. I do not think there is a general form in use at all.

Q. You do not remember whether or not that was adopted or not? A. No.

MR. BALDWIN: I offer in evidence paragraph 285 on page 130 of the minutes of the New York conference of the 10th of February, 1909, headed "Memorandum of Freight Contracts."

Marked Petitioner's Exhibit No. 165.

Q. Do you remember who it was that proposed a contract 1385
in that form? A. The writing of that record is the Prince Line agency. I do not know which individual.

Q. Paragraph 286 on the same page shows that the Hamburg and Prince Line agents will consult their principals as to their views on the form of the contract. That would indicate, would it not that this form as proposed here was not by the Prince Line and that it was by some person representing the Lamport & Holt Line? A. I do not think so. I really could not say. The handwriting is only——

Q. Look at the handwriting and see if you can state whose 1386
it is? A. (After examining writing.) I do not recall the handwriting.

Q. Paragraph 286 of the minutes says: "The Hamburg and Prince Line agents will consult their principals as to their views of this form of contract. After having received instructions that all contracts shall be made in the name of the three lines and signed by each agent."

Q. When that blank proposed form of an agreement was offered it had been under some discussion at the conference? A. I presume so.

Q. The mere fact that it appears as you think to be in 1387
the handwriting of some person connected with the Prince Line does not necessarily indicate to your mind that it was suggested by the Prince Line, does it? A. Yes, it does.

Q. If that was so, why would they have to refer back to their principals for instructions? A. I really do not recall the instance.

Q. You did not refer back to your principals. You already had authority to make a contract in that form? A. Again without studying it, I do not think it is in the form I would have approved of at the time. 1388

Q. Do you know whether it was ever adopted in that form and if not what were the reasons? A. I think it never came to any agreement. It was left on the table indefinitely.

Q. Wasn't there some discussion about it as to how it was to be signed? A. There was some discussion at the time or has been.

Q. At that time? A. I presume so.

Q. Had that to do with whether it should be signed by one or three? A. That was the question that was under discussion.

1389 Q. The Prince Line and Hamburg Line insisted that there should be three signatures for the benefit of the conference? A. Apparently if they did not accept it it was not done. I will allow them to speak for themselves.

MR. BALDWIN: I offer in evidence paragraph 287 on page 131 of the Minutes of the New York conference dated February 10th, 1909.

Marked Petitioner's Exhibit No. 166.

Q. Your line objected to having three signatures because
1390 you had been informed by your lawyers that it would probably be illegal as violating in some way or other the Sherman Act? A. That was at the time our doubt—that that might be so.

Q. The question was whether you did not object because your lawyers told you it was illegal to have a contract made and signed by the three? A. I do not think our lawyers advised us in so many words. No, sir. As a matter of fact we have contracts in existence today signed by all the three lines.

1391 Q. I show you a letter dated February 11th, 1909, addressed to Lamport & Holt—Exhibit No. 81 for identification—and ask you whether or not this is a letter signed by you to the Lamport & Holt Line the day after this meeting in conference of February 10th, respecting the way the contract should be signed? A. It appears to be a correct copy and I accept it.

MR. BALDWIN: I offer in evidence so much of this letter as includes the caption, including the date and that part on page 3 with the caption "South American Trade."

1392 Marked Petitioner's Exhibit No. 167.

Q. You say here at the conclusion of this paragraph of Exhibit No. 167 that in the minute 287 you officially recorded your lawyers' opinion relative to the three line signature. You did have the opinion of your lawyers to the effect that for some reason or another they considered a three line signature to be illegal? A. No, I think not a direct opinion.

Q. What did they say about it? A. They gave us to understand that unless it was requisite in the business and

necessary to take up on account of the business it would be 1393
just as well not to raise the technical legal question.

Q. What technical legal question do you mean? A. Those are my own words—my own language.

Q. I ask you what they said? A. I am giving you what they said. They said that unless it was necessary in our business to have a prescribed form it was desirable not to raise any technical legal question.

Q. Didn't they say what they were? A. No.

Q. Have you got a copy of it? A. It was given in conversation, I think.

1394

Q. Who are your lawyers? A. I do not recollect the gentlemen who gave that opinion.

Q. You had regular lawyers at that time? A. We have had a good many individuals—yes.

Q. The regular lawyer for the Lamport & Holt Line as represented by Busk & Daniels was Mr. Burlingham? A. Mr. Burlingham has, at times, been in the firm.

Q. Was it that firm that gave you this legal opinion? A. I do not recall the individual.

Q. Did you have any other lawyers at that time? A. We 1395
had discussions in which other lawyers would take part.

Q. Was it that firm that gave you this opinion? A. I cannot recall. I do not remember.

Q. I call your attention again to the exact wording of paragraph 287: "The Lamport & Holt agents are informed by their lawyers that three signatures may be construed as illegal." Is that in your handwriting? A. It is my handwriting, yes.

Q. Did you inform your conferees at the time you wrote this in the book and you had a discussion what reason your 1396
lawyers gave for their opinion that a three signature contract might be illegal? A. I do not remember.

Q. How long did this conference last each day? A. Some times very short periods—fifteen minutes, or an hour.

Q. This coming immediately after some person had proposed a blank form of contract, that is to say, on the same date, appearing in the book immediately after, doesn't that refresh your recollection so that you can say whether you had any discussion between yourself and your conferees as to what the lawyers had said about the legality or otherwise of a three signature contract? A. I presume as a

1397 matter of course we would have stated to our colleagues just what I have stated to you just a moment ago.

Q. You did not state it? A. They simply said avoid doubtful questions.

Q. Did they say doubtful questions? A. They said if nothing is in doubt why take the risk.

Q. You had a conference with your lawyers and submitted to them the question of whether a contract with three signatures was in any way illegal, but you did not ask or did not know what the lawyers considered to be il-
1398 legal in the matter? A. No, I was perfectly satisfied with the fact that it was better not to raise the question.

Q. The lawyer said: "Do not raise any doubtful questions and therefore have the contract signed by one agent alone"? A. There is another very important reason.

Q. Will you answer my question? A. What is the question?

Q. The lawyer said: "Do not raise any doubtful questions and therefore have the contract signed by one agent alone"? A. No, I cannot say that the lawyer made any
1399 such statement as that.

Q. Did they mention the Sherman Law to you at all? A. I cannot recall any part of the discussion. I only have a remembrance in general as to the impression I had.

Q. Who was present at that meeting when you in your own handwriting entered upon the minutes the fact that your lawyers had said that it was illegal—was Mr. Gotthiel present? A. I have no recollection.

Q. It apears on page 126 which seems to be the opening of the session of February, 1909, that Mr. Sparks was in the Chair. Do you remember that? A. If the records say
1400 so, I accept it.

Q. After you made that entry did you have any further discussion with any of the agents of the conference about why a three signature contract was undesirable? A. Not to my remembrance.

Q. Did you discuss it with any of the principals—either your principals or the head of the Hamburg-American or the Prince Line? A. I do not recall any instance. If you have the record it will refresh my memory.

Q. Do you remember having any argument by which you attempted to persuade them that the three signature contract was illegal? A. No, I do not.

Q. I call your attention to page 3 of a letter to Lamport 1401
& Holt dated March 5th, 1909, and ask you whether or not you sent that letter? A. If the letter is a correct copy I think it is.

Q. Do you doubt it? A. No, I accept it.

Q. This letter has this clause "In connection with the three signatures we are pleased to say that we have gathered from Mr. Ballin at the recent conference meeting that our arguments in favor of one signature meet with his approval." Now, what were your arguments that persuaded him to agree with you that a one signature con- 1402
tract was legal and that a three signature contract was not?

MR. BURLINGHAM: I object to that—you are incorporating a contract—material which is not in evidence and he has not said any such thing.

MR. SPOONER: It does not follow that because Mr. Ballin approved of the contract that any legal question was involved in it.

MR. BALDWIN: I will withdraw that question and put it this way.

1403

Q. What were your arguments that persuaded Mr. Ballin at the conference meeting stated in this letter in favor of one signature contract. I think that is fair? A. As I recall the matter it was really touched on only very lightly. The arguments that I put forward at the time were that a one signature contract was a direct contract with the merchant and the merchant had some one to hold responsible and liable for its fulfillment and that a three signature contract made a divided responsibility with the shipper not knowing which one of the three to apply 1404
to and being passed from pillar to post. I do not think that the question of legality was raised at all nor any mention made of it——

Q. Who is Mr. Ballin? A. Mr. Ballin is connected with the Hamburg-American Line.

Q. He is the head of it? A. I think so.

Q. Was at that time? A. Yes.

Q. Are you able to state now, Mr. Daniels, the substance of your argument to Mr. Ballin and are you able to state the substance of the opinion of your lawyers as to why a three signature contract was not legal? A. One side is

1405 the natural business side and the other is also an inference that if it is not necessary to do a thing that might involve a question there is no need of doing it—consequently that being a fact why go any further.

Q. If that was purely a business matter, why did you refer to your lawyer? A. Because we have to consult our lawyers in connection with our business as to laws a great deal. We have had very good legal opinions and have paid for them too, to try and conform our business to the American laws. We not only hope to do it but have done it.

1406 Q. I will ask to have that stricken out about what you hope to do. Mr. Ballin and his line—the Hamburg-American Line—have their own lawyers here? A. I cannot answer for that.

Q. Do you mean to say that nothing was discussed between you and Mr. Ballin as to the effect upon a three signature contract of the provisions of the Sherman Act? A. Not to my recollection.

Q. And you said nothing to him whatever about the opinion of your lawyers? A. Not to my recollection—I think not.

1407 Q. Mr. Ballin is a man of very large experience in these shipping matters? A. Very large, indeed.

Q. And he was persuaded by your statement that it would be better for the shipper to have a one signature contract—because the shipper then would know his principal and arrange matters accordingly? A. I think so, at the time.

Q. Up to that point he did not seem to know that that might be an important thing until you told him? A. I think he knew that before I mentioned it to him.

1408 Q. What was it brought about the presence of Mr. Ballin at that meeting and the necessity for your arguments to convince him about it? A. I think the question of dividing the contract, as shown earlier in the record you were speaking about the other day, was brought up in advance by their representative here.

Q. Was anything said about the meeting you had had on February 10th, 1909, when you had mentioned the opinion of your lawyers about the question of the three signatures being illegal? A. I think not.

Q. He did not mention it to you? A. Not to my recollection.

Q. Was any principal of the Lamport & Holt at the 1409
meeting at which you persuaded Mr. Ballin—was Mr. Melly there? A. Yes.

Q. He was at that meeting? A. Yes.

Q. He did not mention anything about the question of the legality suggested by your lawyers? A. I think not.

Q. You do not now recollect whether or not the opinion of your lawyers on the question of the legality was written or verbal? A. My recollection was that it was an inference drawn from conversation.

Q. Your own inference was that he did tell you what the 1410
law was? A. My own inference.

Q. Have you not got a recollection now as to what question you asked him so as to bring forth his opinion? A. I cannot recollect any details.

Q. What was put up to him for an opinion. You did not go there and talk in a desultory sort of way. What was it you put up to him? A. I said the question had come up between the lines of the three signatures—not only a question of policy, but whether they were legal as well, and my recollection was that the lawyers at that time simply said
it was not necessary at the time and my recollection was 1411
that the lawyers at the time simply said that if it was not necessary to embody that it would probably be just as desirable not to raise the question.

Q. Did you report in paragraph 287 that the three signatures to the contract would be illegal? A. No, I said, "may be so construed."

Q. The three signatures may be construed as illegal—did he show you how they could be construed as illegal? A. I do not see how you expect any person to go into those details. 1412

Q. He did not advise you as to the policy? A. What policy?

Q. The policy you spoke about a moment ago? A. The business aspect. That was self-apparent to us.

Q. You went to him to get an opinion as to the legality of a three signature contract? A. As to whether it raised any question of legality.

Q. Did he say in what way it might be considered as illegal? A. No, they are generally very shy at making any statement at law.

Q. Why did you go back to the conference and make the

1413 statement that your lawyers had advised you that it might be illegal? A. I said "might be construed"—that is my own construction. I am getting to be quite a lawyer myself now.

Q. I think you had better start in practice. According to this paragraph 287 you reported to your conferees that according to your lawyers the three signatures might result in the contract being construed as illegal. I want to ask you the question direct and I would like you to give me an answer direct. Did your lawyers, or did they not, tell you
1414 or say to you in what sense the contract might be construed to be illegal? A. They did not elaborate to that extent.

Q. Did you go to them to ask them whether the three signature contract might be illegal or for what purpose? A. I do not recall very clearly about the details—about which you are asking me so closely. My recollection is simply the sense of the question was put before them as it came before us.

Q. What question? A. The question of whether or not we would adopt such a form of contract as proposed.

Q. That is with three signatures? A. Yes, or the other
1415 one—one signature.

My impression was, as I have reported, if it was not necessary to adopt the three signatures it would be preferable to avoid any questions, and not to do so.

Q. Then why did you report back to your conference that the lawyers' opinion was that the three signatures might be construed to be illegal? A. I consider that to be synonymous with what I have told you—only in different words.

Q. You consider an opinion or suggestion by your counsel that a certain thing might be construed to be illegal synony-
1416 mous with the suggestion that it might be undesirable? A. Undesirable to do—decidedly.

Q. From a legal standpoint or a business point of view? A. I am taking matters from a business standpoint.

Q. Did the lawyers base their opinion on the legal side or the commercial side? A. I cannot answer that.

Q. Did you in your discussions with Mr. Ballin or with your conferees at any time point out why a three signature contract would be just as valuable to the shippers as a one signature contract? A. As valuable to the shipper?

Q. Yes—from a legal standpoint? A. No.

Q. Did I understand you to say a moment ago that this

three signature contract was more or less undesirable be- 1417
cause of the shipper not knowing who his principal was or whom to go to—I mean who the responsible party would be of the other side of the contract. You do not mean to say that now—that was not the real reason? A. That, in my opinion is a commercial reason why it is a preferable contract.

Q. You do not mean to say that nobody had advised you that so far as the shipper was concerned his remedy at law was not as good? A. I do not think that question came up at law.

1418

Q. I call your attention to what purports to be a copy of an agreement entered in the New York conference minutes on page 129 under date of February 10th, 1909. Is that a copy of an agreement made and entered into between Paul F. Gerhard & Company on behalf of the conference and the Parsons Trading Company? A. It appears to be—yes.

MR. BALDWIN: I offer in evidence the agreement bearing date February 10th, 1909, with the Parsons Trading Company.

Marked Petitioner's Exhibit 168.

1419

Q. Now, this Exhibit 168—do you remember or not when it was signed by Paul F. Gerhard & Company agents that they put the signature there—the Prince Line, Hamburg-American Line and the Lamport & Holt Line? A. They would put the signature of the line themselves. They appeared to have signed that contract on behalf of the lines.

Q. That is what you construe to be a three signature contract. That is to say a contract of Gerhard & Company as agents for the Hamburg-American Line and for the Prince Line—they act on behalf of the Prince Line and the Lam- 1420
port & Holt Line for the purpose of making that contract? A. I call that a one signature contract. With the phrascology as agents for the three.

Q. Do you remember whether the original of this contract was subsequently signed by the Lamport & Holt? A. It was not—no. Only changed from what you see there.

Q. It was reported back to the conference as of this date and the provisions therein ratified by the conference? A. It was accepted by the conference—yes.

Q. Who fixes the rate of $5.00 per ton of 40 c. f. landed in this contract? A. I presume by agreement of the con-
[illegible]. The records will show. I do not know.

1421 Q. This contract was likewise made on the understanding that the Parsons Trading Company should confine their shipments for that period entirely to the conference lines? A. The contract speaks for itself.

Q. Is not that your understanding of it? A. It speaks for itself.

Q. For all such shipments. They got this rate because they did agree to that? A. Not as a *sine qua non*. A contract is made of that character but does not require to specify a quantity.

1422 Q. "Not less than 500 tons or more than 1500 tons"? A. A maximum and minimum—that rate in the open contract gives the Parsons Trading Company the privilege of sending their goods under that contract—their goods would go substantially under that contract.

Q. The shippers agree to forward all such shipments of printing paper and pulp board as they contract to these ports? A. With that contract those terms were for goods that were—the minimum and maximum show that it was an open contract and the terms tend to make sales.

1423 Q. This contract protects them in the event that if they did not make the shipments or sales for any particular amount they would only be held for the minimum? A. Yes.

Q. Do I understand you to say that the words "The shippers agree to forward all such shipments" mentioned by these conference lines would naturally be that they should confine their shipments to this line? A. If there is a maximum that must be the maximum liability of the line—if they convey any shipments in excess of that liability, unless there is a provision in the contract, it would be a ship-

1424 ment in excess of the maximum. In other words, they were not required to ship all during the period covered by this.

Q. To ship all their paper, printing paper and so forth over these conference lines? A. All inside of the maximum being in excess of the maximum if there was a clause provided that would be all right.

Q. Did you know that they fixed this minimum here upon a direct understanding between yourselves—that is the conference lines and they thought in all probility they could not and would not have more than 1500 tons maximum? A. No, that is a precautionary measure when we make a contract to limit the liability.

Q. You say that neither you and neither of the confer-

ence lines said to Mr. Siebert, representing the Parsons 1425
Trading Company, that they would not make that contract unless they would confine all their shipments during that period to the conference lines? A. We did not say so and I do not think any other Agent would say so in the terms in which you express it.

Q. Was it pursuant to the signing of this agreement by Paul F. Gerhard and Company as agents on behalf of the three lines that this proposed form of agreement, and the discussion, and your statement upon the remark concerning the three signature contract, arose? A. That I cannot 1426
recollect in detail. I could not remember that detail.

Q. I show you on page 144 of the Minutes of the conference, dated March 3rd, 1909, a copy of a contract made with the Union Carbide Sales Company and ask you whether that is a copy of a contract which was entered into by Funch, Edye & Company? A. It appears to be so.

MR. BALDWIN: I offer this in evidence—Contract with the Union Carbide Sales Company.

(Marked Petitioner's Exhibit 169.)

1427

Q. This contract purports to be signed by Funch, Edye & Company on behalf of the three lines. Do you construe this to be one of the three line contracts or one of the single signature contracts? A. Single signature contract.

Q. I suppose that the rate of 17½ cents per c. f. under the rate tariff mentioned therein was also fixed in conference? A. I presume so.

Q. Was not the rate in this contract fixed upon the understanding between the conference lines and the Union Carbide Sales Company that they should confine all their 1428
shipments of Calcium Carbide, and controlled by the Sales Company during the year 1909, to these lines? A. The contract speaks for itself.

Q. That was your understanding—not being any minimum or maximum?

SENATOR SPOONER: He has made his answer.

MR. BALDWIN: I want to ask him again and get another answer. There being no mention of a minimum or a maximum, that was your understanding.

MR. BURLINGHAM: I object as the contract speaks for itself, and his understanding is of no value.

1429 WITNESS: Personally, as I do not carry the stuff on our boats, I am not interested in the contract.

Q. You know nothing about what appears here? A. That is all I am interested in.

Q. On page 151 of the minutes of March 15, 1909, I find this entry "Funch, Edye and Company notify that Thomsen have renewed their contract for Pernambuco. Kerosene for April, May and June in accordance with the option given them in minute 211 of meeting, December 30th,
1430 1908." Do you know what that contract was—the terms of it? A. I do not recollect. No. Unless you refresh my memory.

Q. I show you what purports to be a contract, or a synopsis of a contract, paragraph 211 of the minute book, page 98 under date December 30th, 1908, and I ask you if that is a contract or a synopsis of a contract? A. That is—if it is on the records I accept it.

Q. Upon reading this, it purports to be practically a report of the synopsis of the contract without giving all its terms? A. That is what I understand.

1431 Q. This paragraph 211, being a report of Funch, Edye and Company, on the Thomsen Contract,—being a report they made concerning the synopsis of the contract which they made with the Thomsen Company, I offer this in evidence. That is so.

Marked Petitioner's Exhibit 170.

Q. I understand then that the renewal reported by Funch, Edye and Company under date March 17, 1909, was the renewal of the contract of which this is, in a sense,
1432 at least, the substance? A. Yes.

Q. The rates in that contract were likewise fixed in conference? A. I think so, although I see a notation there "By majority." Possibly we were not interested. We did not go to Pernambuco in those days, and we were not interested in that.

Q. Whether you participated in it or not, the rate was fixed by a majority of those in the conference? A. I should accept that as correct.

Q. Do you know whether that was a single signature contract—Funch, Edye and Company for the benefit of all—or a three signature contract? A. I think there are

no three signature contracts except one with the Standard 1433
Oil made quite recently—of which you have a copy.

Q. I show you what purports to be a report of the Prince Line of a contract for the benefit of the three lines made with G. Amsink and Company for shipment to Pernambuco of cases of kerosene. Can you state if the contract itself was ever entered on the minutes anywhere? A. I cannot state but probably it would show if it was there.

Q. I offer this in evidence.

Marked Petitioner's Exhibit 171.

1434

Q. Do you remember whether this contract was a single signature or a three signature contract? A. I can answer that with one answer. Everything up to this one question, I have mentioned, are one signature contracts.

Q. That is up to the Standard Oil contract some time in 190— A. 1912.

Q. Was it October 11th, 1912? A. If you have got it there it would show.

Q. Is this it? (After examining.) A. That is correct.

Q. Up to that time they were all single signature con- 1435
tracts. That is, one agent would make the contract for the benefit of the three confreres? A. Not necessarily. One agent would make the contract sometimes for his own benefit.

Q. In most instances, the contracts that were reported back to the conference would be signed by one agent on behalf of the three confreres? A. Part that way—for giving the privilege of shipping on the steamers of the other line.

Q. It was either in one form or the other? A. That was practically the form. 1436

Q. Up to the date of the Standard Oil Contract in 1912, there were no instances where the contract bore the signature of each of the lines? A. Not to my recollection.

Q. Who made the suggestion that precipitated the discussion with reference to the legality or otherwise of the three signature contract? A. I do not recall.

Q. Somebody in conference had suggested—had they not —that it would be better to have three signature contracts? A. Not with any object in view.

Q. That does not answer my question? Somebody had suggested it? A. Somebody had brought it up.

1437 Q. Was it a fact that the Lamport & Holt Line was carrying the largest percentage of the freight from New York to Brazil and were making these contracts in their own name that brought about the suggestion of the other conference lines that they wanted the contracts signed by each of the three? A. I do not know what their motive was.

Q. Was not that suggested in the discussion? A. They never suggested such a thing—such a motive in so many words.

1438 Q. In so many words or in any particular words? A. I mean "implied." Any reason they had we would have to guess.

Q. Did the Hamburg-American Line object because you had made a contract in that form and they wanted the contract made in such form that the three would sign? A. I think the object would be that they wanted a more direct liability or personality in the contracts.

Q. You think they wanted to butt in for the liability? A. No, hardly.

1439 Q. What do you mean by a "more direct liability"?

MR. BURLINGHAM: He said "or personality."

WITNESS: When I say "Liability" I mean liability with the shipper—contract with the contracting party.

Q. It was not because they wanted to participate in the liability in any way? A. No. I do not know whether they did.

Q. Do you understand "liability" to be used in the sense
1440 so that they might be held if the rest of you defaulted? A. No. I think they wanted to increase their personality in the trade.

Q. I call your attention again to the Singer Contract made by Busk & Jevons—that is the contract between Lamport & Holt and the Singer Company, under date December 12th, 1908, already in evidence, that purports to be a single signature contract by Busk & Jevons as agents and not on behalf of anybody else, as appears on the contract. When you reported that contract to the conference on January 13th, 1909, did not the Prince Line and the Hamburg-American Line protest because you had made that contract

without making it on behalf of them as well? A. Doesn't 1441
the record show some such thing?

Q. I am asking you? A. I do not recall it.

Q. On the same day I find that paragraph 237 says "That this contract is tabled pending further instructions on the subject from the principals." Wasn't it tabled pursuant to a protest by the other two lines? A. I should gather they were not willing to accept it.

Q. Didn't they subsequently, after having referred back to their principals, enter their acceptance on the minutes in that form? A. I do not recall it. You have the minutes 1442
and they speak for themselves—or the records, at least.

Q. On March 3rd, 1909, appears on page 145 of the minutes, paragraph 323, as follows: "Referring to Minutes 236 and 237"—that is the copy of the contract just referred to and the minutes with reference to tabling it—"the German Line now advises that they accept the contract made by the Lamport & Holt Line with the Singer Sewing Machine Company." After this contract was tabled and before it was put into operation at all, wasn't there a considerable discussion between your line and the other lines 1443
with reference to that contract? A. The contract was put into operation at once, and I do not recall any controversy.

Q. But for some reason or the other, this entry was made here that the Hamburg-American Line consented to that contract. What was there tabled for the approval of the other two lines after the date when the contract was made with the Sewing Machine Company? A. I do not recollect the definite reason why it was tabled.

Q. Wasn't it due to the fact that they objected strongly to the Lamport & Holt Line making contracts in their own 1444
name without putting all their signatures—all the signatures of the other confreres, or making it on behalf of the other conference lines? A. That I cannot recall. You have the records. They will show.

Q. No recollection of it? A. No—not in that detail.

Q. In your letter to Lamport & Holt, under date 11th January, 1909, Exhibit 79, you say that the Singer Company did not want to be bothered by representatives of the other lines and among other things, that the Prince and German Lines had tried to force themselves upon the shipper who for reasons of his own does not want them, and, had they maintained this p sition, the chances are that the

1445 contract would have gone to the Lloyd or the Norton Line. On the other hand, in accepting the same in the way it was offered the conference have secured the business. At the time you wrote that letter you were cognizant of the fact that the Prince and German Lines had tried to get the business and that the Lamport & Holt in taking the contract themselves did so not only for themselves but in behalf of the other two? A. I do not recall.

Q. On page 14 of the Minutes, under date 26th May, 1909, I find that Funch, Edye & Company report a contract for
1446 three lines with Messrs. Thomsen & Company for a shipment to Pernambuco of 10,000 cases of kerosene, monthly during July, August and September, the rate being 14 cents net per case f. f. a. Do you remember whether or not that rate was also agreed to in conference? A. I think it was.

Q. Do you remember whether that was a single signature contract? A. As I recall——

Q. It was like the others where it was made by one on behalf of the others? A. The contract speaks for itself.

Q. Unfortunately it says here "For account of the three
1447 lines." Does that refresh your recollection so that you can state whether it was Funch, Edye and Company, agents on behalf of the other three? A. I am sorry I cannot recall the details.

Q. The contract is not entered in the records and I am asking you if this memorandum refreshes your memory? A. There would have been no other contract other than that memorandum or the exchange of letters. If there was a formal contract it would be entered in the records.

Q. On page 19 of the minute book under date of June 2nd, 1909, I find Funch, Edye and Company reporting a contract
1448 for the account of the three lines with Allerton D. Hitch and Company for shipments of kerosene, 35,000 to 45,000 cases in six shipments to Pernambuco, 25,000 to 35,000 cases to Maceio, and 20,000 to 30,000 in three shipments to Cabedello at fourteen cents f. f. a.

Q. Was that rate also fixed in conference? A. I presume so.

Q. Was that a contract made by them and signed on behalf of the three lines? A. I think the abstracts cover everything. It speaks for itself.

Q. I am asking you the question. "For account of the three lines." Does that refresh your recollection? A. As

I said before, I think everything is a single signature con- 1449
tract.

Q. On behalf of the others. The fact that it says here "for account of the three lines." Wouldn't that indicate that it was signed in that way? A. I do not think there is any formal contract. If there was a formal contract it would be entered on the records.

Q. Do I understand that where the contract was not spread on the minutes, but just a report of it, that there was no formal contract? A. There was no formal contract.

1450

Q. On page 87 of the Minutes under date November 24th, 1909, there is a copy of what purports to be a contract made by Funch, Edye with the Union Carbide Sales Company. I offer this in evidence.

(Marked Petitioner's Exhibit 172.)

Q. The rates mentioned in this contract are also fixed in conference? A. I presume so.

Q. I show you what purports to be a contract made by Funch, Edye and Company with the Singer Sewing Machine 1451
Company under date November 12th, 1909. That is a photographed copy. Do you remember it being made? A. The contract will speak for itself.

Q. I offer this in evdence.

(Marked Petitioner's Exhibit 173.)

Q. This contract seems to be signed by Funch, Edye and Company as agents for the Hamburg South-American Line and the Hamburg Line, Joint Service, but there is a provision in here that it is made for the account of themselves 1452
and for account of the Prince Line and the Lamport & Holt Line. I suppose that when this contract was first reported back to the conference the authority of the Hamburg and the Prince Lines had to be obtained, didn't it? A. The contract would be in force after it was signed. The rates previous to the making of the contract were by agreement.

Q. It was reported to the conference to get the acceptance and consent of the other two lines? A. No.

Q. If that is not so, how could you provide for the shipper —I mean the carrier—having the privilege of sending over

1453 the other two lines? A. That is what any contracting lines give. It is their form of making it up.

Q. You make provision here practically that the shipments of the Singer Sewing Machine Company to these ports will be shipped by the steamers of the above-mentioned lines at 16 cents per c. f. by the German and Prince Lines, with the Lamport & Holt Line, charging ten per cent. primage in addition. You must have referred that back to get some sort of acceptance from those two lines before you could make that operative? A. The rate and the fact
1454 that the line so treated the contract might have been agreed upon before—possibly so—before the negotiations were in progress.

Q. Before making a contract of this importance you had discussed these things with the agents of the other two lines before making it, and the rate and the essentials were practically agreed upon? A. No. Only the rate.

Q. How did you take it to bind the other two companies so that shipments could be sent over their line, or was that the general agreement? A. That is the general agreement —only a different way of expressing it.

1455 Q. As a matter of fact, before you entered into this contract of November 12th, 1909, you cabled to your principal or to the London conference to get authority? A. The records will show. I presume so.

Q. I show you what purports to be a cable on page 230 of the Cable Book; that is your cable to the London conference? A. It is a cable from the secretary of the New York conference to the London conference.

Q. The terms of this contract were discussed in conference actually before you signed it? A. If you will refer
1456 to the cable yourself you will see that there was an agreement.

Q. That does not answer my question? A. Naturally.

Q. The contract is dated November 12th, 1909, and the cable is dated November 4th, 1909, so that in conference you had discussed the terms of the contract before you entered into it? A. Some portions of it.

Q. There was some disagreement between the Lamport & Holt and the other two lines and consequently the New York conference cabled to the London conference to get instructions. Is that right? A. Not so much on account of the disagreement as to cable the offer that was made and the rates obtainable.

Q. You did send a cable? A. Certainly. 1457

Q. I will read the cable for record purposes. "November 4th, 1909. Addressed to the London conference. Singer Manufacturing Company offer Funch, Edye and Company contract all shipments 1910 Cabedello, Maceio, Rio de Janeiro, Santos, Pernambuco and Bahia, 16 cents net per German Prince with ten per cent. primage when Lamport & Holt used for Rio de Janeiro Santos Bahia. Busk does not agree these terms. Rio de Janeiro, Santos owing their contract with Singer minute 230 January 13th, state this contract still runs. Singer state unless their pro- 1458
position accepted they will close Lloyd all shipments then cancel Lamport contract with result of loss of Rio de Janeiro Santos to Lamport & Holt and all ports to Prince and German. Singer will wait until Saturday before closing. Brokerage 1¼% imperative without sanction Busk & Daniels."

Q. The "Busk" referred to who did not agree is your partner? A. No, an abbreviation of the firm name.

Q. That is a matter that came under your personal supervision? A. Yes.

Q. I offer in evidence the reply to that cable. "November 6th, 1909. Singer and Company. Cannot reply yet. Try and keep it open. Reply by Thursday," and on November 10th, 1909 "Leave Singer Company to be dealt with New York agents unanimously for joint action." 1459

The hearing adjourned until 2 p. m.

AFTERNOON SESSION.

LORENZO DANIELS recalled.

DIRECT EXAMINATION by Mr. Baldwin: 1460

Q. Referring to this cable that has just been read into the evidence, do you remember now, what there was in the Singer contract that you objected to as reported in this cable? A. As I recall it, our objection was to incorporating the shipments to possibly Bahia, Rio and Santos, as the contract that we had we considered at that time still in force.

Q. I don't quite get that—incorporating what? A. Shipments to Bahia, Rio and Santos.

Q. You had yourself at that time a contract with them

1453 the other two lines? A. That is what any contracting lines give. It is their form of making it up.

Q. You make provision here practically that the shipments of the Singer Sewing Machine Company to these ports will be shipped by the steamers of the above-mentioned lines at 16 cents per c. f. by the German and Prince Lines, with the Lamport & Holt Line, charging ten per cent. primage in addition. You must have referred that back to get some sort of acceptance from those two lines before you could make that operative? A. The rate and the fact
1454 that the line so treated the contract might have been agreed upon before—possibly so—before the negotiations were in progress.

Q. Before making a contract of this importance you had discussed these things with the agents of the other two lines before making it, and the rate and the essentials were practically agreed upon? A. No. Only the rate.

Q. How did you take it to bind the other two companies so that shipments could be sent over their line, or was that the general agreement? A. That is the general agreement —only a different way of expressing it.

1455 Q. As a matter of fact, before you entered into this contract of November 12th, 1909, you cabled to your principal or to the London conference to get authority? A. The records will show. I presume so.

Q. I show you what purports to be a cable on page 230 of the Cable Book; that is your cable to the London conference? A. It is a cable from the secretary of the New York conference to the London conference.

Q. The terms of this contract were discussed in conference actually before you signed it? A. If you will refer
1456 to the cable yourself you will see that there was an agreement.

Q. That does not answer my question? A. Naturally.

Q. The contract is dated November 12th, 1909, and the cable is dated November 4th, 1909, so that in conference you had discussed the terms of the contract before you entered into it? A. Some portions of it.

Q. There was some disagreement between the Lamport & Holt and the other two lines and consequently the New York conference cabled to the London conference to get instructions. Is that right? A. Not so much on account of the disagreement as to cable the offer that was made and the rates obtainable.

Q. You did send a cable? A. Certainly. 1457

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Q. I don't quite get that—incorporating what? A. Shipments to Bahia, Rio and Santos.

Q. You had yourself at that time a contract with them

1461 for these ports mentioned in this agreement of November 13; is that it—do you understand the question? A. I don't understand what you mean by agreement of November 13.

Q. This one that you have already—you have identified as already in evidence, and the one concerning which you sent the cable to the London conference? A. I thought that was December 12—that is November 12?

Q. Do you understand the question now? A. I think that our contract that you have on record running 90 days or 30 days—I don't know what period of notice was in
1462 it, in our opinion it was not withdrawn; it was still running.

Q. And your contract applied to ports that—this present contract concerning which the cable was sent expressed ports that you claim were under your prior contract? A. Yes.

Q. What were they? A. Bahia, Rio and Santos.

Q. And that was the only reason that it was sent back to conference? A. That was our objection.

MR. BALDWIN: I offer in evidence page 115 of the minutes of the New York conference, under date of
1463 January 26, 1910, with reference to the Prince Line's report of a contract with the Barber Asphalt Paving Company.

MR. BURLINGHAM: Put it in.

Marked Petitioner's Exhibit 173-a.

Q. Do you know whether there was any formal agreement entered into between the Prince Line and the Barber Asphalt Paving Company? A. The record will show—I think there was a contract.

1464 Q. This Exhibit 173-a on the page I have just referred to is a report of the bookings of the Prince Line; do you know whether or not there was a formal agreement made; I mean to say, a written agreement? A. I should consider that was the gist of a contract or agreement.

Q. Didn't you say a moment ago, Mr. Daniels, that where they actually entered into a formal written agreement, that they then spread a copy thereof upon the minutes, but in case it was an informal agreement, the agent would report back the substance? A. That was the general procedure; I think you have some formal contracts with the Barber Asphalt Company, because there were contracts made at sometime during the period.

Q. Were the rates mentioned in this report made by the Prince Line, agreed in conference; I see it makes previous mention, for instance, that the Lamport & Holt Line would charge $5—I take it net for 2240 pounds and ten per cent. primage if it goes on your boat? A. The Lamport & Holt Line have that privilege. 1465

Q. I show you what purports to be a letter confirming agreement by Paul F. Gerhard & Company as agents, addressed to Messrs. Guinle & Company, under date of January 21st, 1910?

MR. BALDWIN: I offer that in evidence. 1466

MR. BURLINGHAM: Is that a contract; a full contract?

MR. BALDWIN: It is a letter confirming an agreement for a contract.

MR. BURLINGHAM: From whom?

MR. BALDWIN: From Gerhard to Guinle.

MR. BURLINGHAM: All right.

MR. BALDWIN: I offer that letter in evidence.

Marked Petitioner's Exhibit 174.

1467

Q. This contract was made by Gerhard & Company and the terms therein provided for were all arranged at conference, I suppose? A. I imagine the rates only.

Q. With the right to—provision with reference to the shipments on other lines with the Prince Line also arranged? A. Not in advance, I think.

Q. Excepting in a general way, that these contracts were to be for the benefit of the others? A. In a general way one line would make them and present them, and the other lines would accept them or make reservation.

Q. The fact that there were no reservations made in any way appearing in the minutes, it would appear that it was accepted by the other lines? A. I should say so, yes. 1468

MR. BALDWIN: I offer in evidence paragraph 624, page 122 of the Minutes, letters of Paul F. Gerhard & Company, agents, to the Parsons Trading Company.

Marked Petitioner's Exhibit 175.

Q. Do you know whether or not that Parsons' contract was renewed upon the same terms for the year 1911 and 1912? A. I could not state, but the records will show

1469 MR. BALDWIN: I offer in evidence the confirmation of a working agreement, dated 9th of February, 1910, appearing at page 130 of the Minutes, paragraph 642.

Marked Petitioner's Exhibit 176.

Q. Mr. Daniels, when you confirmed this arrangement with the United States Steel Products Export Company, you already had the authority of your conferees to make it, didn't you, and embody those terms? A. I presume in
1470 a way.

Q. Well, the fact that you signed Busk & Daniels as the agents, and said that it was on behalf of the Lamport & Holt Line and the Prince Line, and the Hamburg Line, joint service to cover the transportation with their shipments indicates, does it not, that you had already authority in some form, to consummate that agreement? A. I should say so, yes.

MR. SPOONER: That contract provided that it could be terminated at any time on 30 days' notice.

1471 MR. MONTGOMERY: They generally do, Senator, a number of them at least.

MR. BALDWIN: Now, I offer in evidence the copy of the agreement made between the Harlan and Hollingsworth Corporation and the Lamport & Holt Line, appearing at page 34 of the Minutes, dated 26th of August, 1910.

MR. BURLINGHAM: That is all right.

Marked Petitioner's Exhibit 177.

Q. This contract, Mr. Daniels, seems to have been the
1472 subject of a reservation by the German Lines. On page 35 of the Minutes appears the following: "The German Lines and the Prince Line accept the declaration of the Lamport & Holt Line of the above contract with the reservation of reopening the question at a subsequent meeting, as the form of the contract is not altogether satisfactory to them and may require an amendment and also because So. Brazil is included, this being contrary to the signed slip authorizing the making of the contract." Do you recall now just what the reservation was that was made by the Prince Line and the German Line? A. I cannot recall without more detail.

Q. Did it refer solely to the fact that it applied to the 1473
South Brazil? A. I presume so, if the record shows it that way.

Q. Do you know whether or not subsequently the question was opened, under that reservation? A. I do not recall.

Q. Well, you proceeded to operate under that agreement, didn't you? A. Agreement to be operated, yes, sir.

Q. Do you know whether or not the Harlan & Hollingsworth Corporation offered their shipments—whether any of them went on another line than yours? A. Yes. 1474

Q. Under that agreement? A. Yes, under these rates.

Q. So that if that reservation that was made was abandoned that is to say it was never availed of in any way; they went on and carried the shipments of the Harlan & Hollingsworth Company? A. I cannot recall details, but if there is any further record in the minutes——

Q. The fact that I don't find any is the reason that I ask if in all—if in all they did not in all their shipments? A. If there is no other reservation, that is the inference.

Q. Mr. Daniels, I show you a report made by the Prince Line respecting Guinle & Company's contract, setting forth 1475
the rates to take effect November 1st, and concluding—giving the particulars of the rate, and to what they apply, and concluding, "All other business except existing contracts remain in force" and ask you if the rates as there appearing were also agreed on in conference? A. The rates were agreed on in conference.

Q. In other words, the Guinle & Company contract was changed so as to modify the rates in some particular? A. I presume so; the records will show.

MR. BALDWIN: I offer in evidence the report made 1476
by the Prince Line appearing on page 66 of the Minutes, paragraph 1057, under date of November 9th, 1910, of the contract with the Barber Asphalt Paving Company, as agent of Carlos A. de Miranda Jordao.

Marked Petitioner's Exhibit 178.

Q. Now, Mr. Daniels, there are in this minute book, reports of the various conferees' agents of renewals of contracts, where they have been made by them and where—for instance, on page 71, under date of November 23, 1910,

1477 Funch, Edye & Company report that they had renewed contract with Laurentide Paper Company; that is a contract already in evidence.

MR. BALDWIN: (Reading.) "Prince Line report contract for account of the three lines with the Parsons Trading Company for all their shipments of News Printing Paper and Pulp Board under their control to Bahia, Rio de Janeiro, and Santos, during the months of January, February, March, April and May, United States to Bahia, $7.20, to Rio de
1478 Janeiro and Santos, $6.00, all per ton of forty cubic feet landed. Shipments of the Prince Line and Hamburg Lines without primage; shipments by the Lamport & Holt Line, ten percent primage to be added."

Q. Where those recommedations were made and appear here, in which—and change any of its terms, or otherwise, that was all done subject to conference, was it? A. All done by conference agreement.

1479 MR. BALDWIN: On page 71, under date of November 23, 1910, I offer in evidence the report of the Prince Line, contract, in account with the Parsons Trading Company for all their shipments, and so forth.

Marked Petitioner's Exhibit 178-a.

Q. Now, Mr. Daniels, this contract appears to be signed these contracts right down to the present time? A. Yes, sir.

1480 Q. And there have been a great many since the date of the last specific date of November 23, 1910? A. Yes, sir.

Q. In which the rates and terms and so forth, were agreed on at conference? A. The rates are agreed—the terms are not, as a rule, discussed; they are made by the party contracting. The contract is then reported for the records, subject to the appoval and acceptance by the other lines.

Q. Now, come down to October 11, 1912, I show you what purports to be a copy of a contract made between the Standard Oil Company of Brazil, and these respective conferee lines and ask you if that is a copy of a contract made? (Handing witness paper.) A. It appears to be correct.

MR. BALDWIN: I offer that in evidence. 1481
Marked Petitioner's Exhibit 179.

Q. Now, Mr. Daniels, this contract appears to be signed by the three lines for their agents, and you testified this morning, that, with the exception of this contract that all their contracts were signed as a one party—that is, one signature contract? A. That is my recollection.

Q. And that the suggestion made in conference in 1909—the early part of 1909—and concerning which you have already testified, that there was a suggestion that there 1482
should be the three signature contract, was there not—that suggestion, by whomsoever made, had never been adopted? A. That is my recollection.

Q. Under what circumstances was it that this contract with the Standard Oil Company of Brazil was made an exception, so that it did have three signatures? A. As I recollect it I made the suggestion myself.

Q. And what was your reason for it? A. Why, I thought we might just as well sign that way.

Q. Well, was there any change in the laws or conditions 1483
that made it advisable to have a three signature contract in October, 1912, and not before that time? A. Not so far as the legal side goes; on the other hand, I thought it just as well to have a contract like that on record; these cases had already started at that time.

Q. What cases? A. This case.

Q. This case of October 11th, 1912; you mean the case in which you are now testifying? A. Yes.

Q. What was there in that case that made it necessary to have a three signature contract? A. Nothing necessary 1484
at all—I think—I thought it just as well to have it on record.

Q. Well, what was there that suggested the advisability? A. Well, if the point came up, I thought it would be definitely settled as to whether there was any question involved.

Q. What question? A. Any question of propriety, advisability or legality.

Q. Then, there was some question of legality of having a contract of three signatures? A. Speaking of that contract?

Q. Yes? A. I could have a good deal of question as to

1485 what illegality there was; there were so many questions arising about it.

Q. Any questions as to its legality that were raised subsequent to the bringing of suit, or by the bringing of suit, that had not been suggested to you before bringing suit? A. No.

Q. Was it shared in by your conferees? A. Apparently so, or they would not have signed it.

Q. Did you disclose it to them? A. I suggested it, and they fell in line with it.

1486 Q. You merely mean to say that you said "I suggest that we have a three signature contract"? A. No, I suggested that we sign a contract; each line.

Q. That is all you said, you just suggested it? A. That is all.

Q. You did not say so because a suit had been brought? A. No.

Q. And they did not suggest that to you? A. We did not sit in conference at all.

Q. Did you enter in the minute books the reason why 1487 you suggested the three-signature contract? A. I don't think there is such a thing in the record book, but it would show if there was.

Q. Were you making other contracts, about the same time? A. Yes.

Q. And since? A. I think so.

Q. Have you adopted the three-signature method of signing? A. No.

Q. What was there about this one contract that made it advisable to do it? A. Character of the contract; it is a specific contract made by one of our largest shippers; 1488 the terms are very clear.

Q. Are not the terms of all your contracts clear? A. They are not all specific. That contract specifies a specific quantity and specific shipments thereof.

Q. Did you not have other contracts that provided for specific shipments between given dates? A. I think so.

Q. Did you suggest that in those you should have three-signature contracts? A. No, I think that was the only suggestion that was made.

Q. Do I understand from that that you say that it was a mere matter of caprice on your part that you made the suggestion? A. Largely; also from the commercial stand-

point. I thought it was desirable that we should be a party 1489
to the contract with the Standard Oil Company as we have a great deal of other business with them.

Q. Where does the Standard Oil Company—you say that you have other business with the Standard Oil Company; do you mean for the shipment of their products? A. We are constantly contracting with them; yes, sir.

Q. And do you require three-signature contracts for this? A. Those are all individual contracts, general specific accounts for specific steamers.

Q. For the benefit of these conferees? A. For the 1490
steamers.

Q. All pursuant to conference? A. No, I think they are made pursuant to tariff.

Q. Tariff arranged at any conference? A. I have already testified; general tariff, yes.

Q. Well, did any of the other lines at that time, Mr. Daniels, have any individual contracts with the Standard Oil Company? A. Well, I should think so; when I say contracts they are individual bookings.

Q. Well, they are contracts just the same? A. They are 1491
technically contracts, but they are really declarations for space that is confirmed—there is no formal contract.

Q. What was there in reference to this particular contract that required the co-operation of the three—was it the amount? A. The amount and the duration of it.

Q. Did you have any other large contract with the Standard Oil Company at that time? A. I don't recall any in detail, but I think not anything similar in magnitude at all.

Q. Assuming that this contract had been made as a single contract by each one, but provided for shipments to 1492
be made upon the other lines, what advantage was it to the conference that it should be signed by three signatures? A. No material advantage.

Q. Would the fact that there were three signatures as distinct from one signature change the responsibility of the shippers in any way? A. No, the Standard Oil Company is such a large concern, and the size of that business is such that they are one of the few concerns that could deal with all the lines individually, without confusing or conflicting their business.

Q. Was that due to any particular facility, good nature,

1493 or what was it? A. Familiarity with business, and the volume of business they are constantly doing.

Q. Well, the Hamburg-American Line and the Prince Line had not suggested that they should jointly sign that contract with you, did they? A. I have already testified that I think I made the suggestion.

Q. That you made the suggestion? A. As I remember it.

Q. Well, if they had signed the contract as all the other contracts had been signed with one name, and provisions
1494 were therein contained that it could be shipped upon the other lines, their standing on the contract would be just precisely the same, would it, as if they signed it, as far as your course of business was concerned? A. I presume there is comparatively little distinction as to any actual liability if it is a single contract, naturally the single signature would assume the burden of the liability.

Q. You mean as between the three? A. No, as between the shipper and the signer of the contract.

Q. Well, if this contract had been a one signature contract, and clearly understood between all the parties that
1495 it was a contract in which the three had a joint interest, how would that liability be affected? A. I don't think I am qualified to discuss that.

Q. Just a moment ago you said that it affected the liability? A. You are asking a different question now. In the other instances I said that the contract made with the individual, the liability of that individual or single line, is the recognized liability to the party of the first part in the contract, the shipper. If it is a three-line signature, you might pick up any one or all three.

1496 Q. Assuming that this contract was a one-signature contract conforming to the practice that obtained heretofore that it should be a contract by which the shipper or the carriers could arrange to send the shipments, and it is understood and agreed in conference that it should be in behalf of all, and the shipper knew that just as well as you knew it, wouldn't his right to hold the three be just as good as if the three had signed it? A. That involves too many complicated possibilities and liabilities for me. If I had any court records as to how they would judge, I could answer.

Q. I would not have asked the question if you had not in-

jected the word "liability." A. Well, it is my interpreta- 1497
tion—whether it is correct or not correct I should apply to legal advice on that point. My interpretation of the single signature is that the party who makes the contract and the one with whom it is made, are the ones who assume the liability; no matter.

Q. Mr. Daniels, you have testified to the course of procedure obtaining regularly in the New York conference, by which the contracts are made with one signature in behalf of the others, and those have been constant and continuous. Now, was it your understanding at any time that they 1498
were being made that the liability of the three for whose benefit or behalf it was made, would not be just as great as the one that signed? A. My point is that the one that signed it would be the representative on the one side and the one on the other side.

Q. Then, as principals, or those jointily associated with him, their liability would be the same as his, wouldn't it?

MR. SPOONER: That is a question of law.

MR. BALDWIN: I quite agree that it is.

THE WITNESS: We had one unfortunate exper- 1499
ience similar to that. The party went out of business, and our liability came upon us and we were unable to recover, although they were supposed to be partners.

Q. Are you speaking of any of these conferees? A. No.

MR. BURLINHAM: He does not use it in the sense we do; he uses it in the sense "responsibility." 1500

Q. Was there any contract made subsequent to this with three signatures? A. Not to my knowledge.

Q. You spoke a moment ago that you thought the question might just as well have been raised; did you expect to raise the question? A. As it has been raised now.

Q. That is, as the basis of some legal proceeding? A. No, I thought that that being part of our records in the Government suit, it might be desirable to put all the points of the way we wanted to do business on the records.

Q. In other words, you wanted to furnish the Govern-

1501 ment with the requisite ammunition and information to proceed?

MR. SPOONER: If there was any ammunition in it.

Q. Could you confine it to this particular case? A. That happened to be one of the most logical.

Q. And the reason you did not explain it to your associates? A. I didn't personally; the request was made. They considered the matter; I think they took some advice on the matter before they did it.

1502 Q. Did they say to you that they had taken some legal advice on the matter? A. They will have to speak for themselves; they did not speak to me, no, sir.

Q. Now, Mr. Daniels, you considered the Singer contracts large contracts, didn't you? A. Not of the same magnitude as the Standard Oil.

Q. Very important and quite large? A. Not of the same magnitude.

Q. I am not asking that. A. You must consider something large by comparison.

1503 Q. I am not referring to the Standard Oil Company at all. Were not the Singer contracts considered large? A. It was a large Sewing Machine contract.

Q. Compared with the Home Sewing Machine Company contract? A. Yes.

Q. You regarded the Singer contract as very important and very desirable to have? A. Very desirable.

Q. Well, you considered—when it came to renewals of the Singer contract in 1909, that pursuant to some protest of yours, you cabled abroad to get authority to make it,

1504 didn't you, so as to apply to other ports? A. We cabled abroad—we cabled abroad for most all of these contracts.

Q. You remember that you suggested in your cable, didn't you, that unless you could close with the Singer people, that they would take their business to one of your competitors—the Lloyd Brazileiro? A. I don't think we joined in such suggestion; if you will refer to the record——

Q. I am referring to that cable you identified this morning? A. If you will refer to the cable in detail, I don't think you will find that the Lamport & Holt Line joined.

Q. You stated it was sent from this conference to the London conference? A. Yes, the cable itself, stated we did not join in it.

Q. It was because the Singer Sewing Machine Company contract was of such importance that you did not want to lose it? A. Naturally. 1505

Q. You were asked in reference to the Singer Sewing Machine contract at the last hearing, page 539 of the Minutes with reference to the signatures, and among other things, you were asked at page 539 of the Minutes: "Q. If it was so informal that the Hamburg-American Line made the agreement with the Singer Sewing Machine Company, what was there about this informal method of doing business that allowed them to make a contract fixing a rate in which the Lamport & Holt and the Prince Line agreed about? A. Because working in conference we made these rates. That is, we take large contracts on third responsibility. Q. What do you mean 'third responsibility'? A. I mean if there is a large contract it has to be underwritten and if it is larger than any one line can carry it is specified that each line assumes a third liability. 1506

Q. Under the contract? A. Either under the contract or among ourselves.

Q. Do the Singer Company have shipments of such a size that the Lamport & Holt or the Hamburg-American could not take care of them? A. I think although there is no formal provision regarding that particular contract—its volume is not very large—that it is understood that when the lines get a share of the business they are under responsibility for lifting a specific one-third of it." Now, that is a large contract, the Standard Oil contract; was it signed by the three lines because the liability was to be divided into three parts, each one assuming their part? A. I think that the Standard Oil agreement was that each line should assume a third. 1507 1508

Q. Then, the reason for your suggestion that you made a moment ago, was not the true reason, that you wanted to test out the question? A. Absolutely.

Q. Then you had two reasons; one was that you wanted to test it out because the Government's suit had already been brought, and the other reason was that you wanted the responsibility divided equally between the three companies? A. There were plenty of our single signature contracts.

Q. I am asking about the reason of the three signatures? A. It had nothing to do with equal division

1509 Q. Now, I want to make this entirely plain, Mr. Daniels, you testified a while ago that the reason why you suggested, or one of the reasons that you suggested that there should be three signatures to the contract was because the Government's suit had been brought, and you thought this question might just as well be raised, and then a moment ago I asked the question that this, being a large contract, that the reason why the three signatures was suggested to you was because you wanted the responsibility divided equally between the three companies; you remember that? 1510 A. I don't recall that, unless you give my answer to it.

Q. You don't recall it? A. I think my answer is perfectly clear from my standpoint.

Q. Was the reason that you suggested to your conferees that three signatures should be fixed to the Standard Oil contract of October 11th, 1912, due to the fact that the Government suit had been brought, and you wanted to raise the question? A. That was in my mind when I made the suggestion.

Q. Was that the only reason you had in your mind at that time? A. No, I had a second reason.

1511 Q. Now, was the second reason that you had in your mind, because you wanted the responsibility divided equally between the companies? A. No, it was not.

Q. Then, if it was not, what did you mean when you testified at the last hearing to the effect that if there is a large contract, it has to be under-written and if it is larger than any one line can carry it specifies that each line assumes a third liability? A. Our records, and our cables—copies of which you have—will show that our principals from the other side cabled in the instance that I cited, that in the 1512 30,000 steel contract, although it was made over one signature, that it was divided into thirds, and each line was supposed, not only to be responsible for the third, but to carry a third. The same thing applies when you come to contracts made in August for cars over one line. Your cables will show that that provision was stipulated amongst the lines; that is not in the contract with the shipper, but only amongst ourselves; it was stipulated that those would be conditions that each line was to handle what was not desirable freight, its full share. When you come to this contract, although the same thing applied in division, it was not any reason why the signatures should go on where

there had been only one signature, consequently it was not 1513
a factor in our signing with three separate signatures.

Q. But the same division occurred? A. As I recollect the cable said that each line should bear a third.

Q. If, under your single line contract, with shipments, such as you have mentioned, and you cabled concerning a division so that each would bear their divisonal share of one-third, why was there any necessity for changing the method of executing the contract with reference to the Standard Oil Company's contract? A. I told you I had two reasons for making the suggestion, one was that I did 1514
not object, in fact I wanted a contract of that character on record. I saw no reason why we should not do it. In the second place, the Standard Oil Company did such a large business, and are so familiar with business methods, it was only a part contract for their shipments, and that a contract signed with them of that nature was more workable, in fact, they were about the only big concern we could do that with and show our internal arrangement amongst ourselves satisfactorily. The other single contracts, where we bear a third, the shipper does not know that that is our
arrangement. With the Standard Oil we did not object 1515
at all to showing them.

Q. The other contracts appear to be executed by yourself or Funch, Edye & Company in behalf of yourself and all the others; did not the shippers know that there was some internal arrangement concerning the handling of their shipments? A. Yes, but he does not know what it is.

Q. Does anything here indicate that the responsibility in shipments is to be divided in three parts? A. I think that was understood.

Q. Is it on the contract, just point it out (Handing wit- 1516
ness paper)? A. The contract speaks for itself; we can do that business with them clearly and intelligently, whereas with other people there might not be the same conditions existing at all.

Q. Now, Mr. Daniels, take the contract with the Singer Sewing Machine Company, the contract with the Carbide Company and the contract with the Harlan & Hollingsworth Company and the contract with the Parsons Trading Company, for these tramways, they all purport to be signed by the one agent in behalf of all the lines. Now, they are all important business firms, are they not? A. All important

1517 Q. And men just as easy to do business with as the Standard Oil Company? A. Oh, they are not anything like the magnitude.

Q. Just as easy to do business with regardless of the magnitude? A. In the same business conditions, no.

Q. They were not satisfactory business men? A. They were perfectly satisfactory, but not the same volume of business following between us all the time, collectively or individually.

Q. Well, when the contract was made by one agent for
1518 the benefit of all, they had a right, did they not, and did send their shipments over the lines of the three conferees? A. Some of the contracts, operated through the party that made them.

Q. Frequently, at least, their shipments would go up on one of the lines, and then upon the boats of the other line; they did not confine all the shipments to the line or the agent who signed it? A. In some instances they confined all their shipments through the one agent that made the contract.

Q. Did the Harlan & Hollingsworth Company confine
1519 their shipments all to one line? A. As far as they were concerned they confined it to us, and we sometimes allotted another steamer to carry it. They never dealt with anybody but us.

Q. How about the Carbide Company? A. We have not that contract.

Q. What about the contract with the Singer Sewing Machine Company; do they ship over your line entirely or the line of Funch, Edye & Company? A. I don't know; that is done through brokers.

1520 Q. Don't you know how the shipments went? A. They shipped by all the steamers, according to what was convenient.

Q. Take the contracts with the American Foundry Company; that was a one signature contract in behalf of the others? A. That was all shipped——

Q. Was not that a one-signature contract on behalf of the others? A. Yes.

Q. Did they ship all of their shipments over one line? A. They make all declarations to the one that signed the contract.

Q. I am not asking that; I am asking what was actually

carried; did they or did they not confine shipments to one line; you must know as a matter of fact what they did? A. They do indirectly—directly they work with one line, and that line nominates a steamer of the other line. 1521

Q. Can you as a matter of fact say whether the American Foundry Company actually confined its shipments to the line whose agent signed the contract? A. I have answered it; I have told you.

Q. Did they actually go upon the line of one, or whether they did or not? A. The line that took the contract distributed it amongst the other lines. 1522

Q. Then, all of the lines carried their shipments, I am to infer? A. Yes.

MR. BURLINGHAM: It is not an inference, it is a fact.

MR. SPOONER: It is a good thing for the public.

Hearing adjourned to Tuesday, February 18th, 1913, at 10:30 o'clock a. m.

New York, February 18, 1913. 1523

By consent hearing adjourned to Wednesday, February 19th, 1913, at 10.30 o'clock A. M.

New York, February 19th, 1913.

By consent hearing adjourned to Tuesday, February 25th, 1913, at 11 o'clock A. M.

New York, February 25th, 1913.

Hearing resumed pursuant to adjournment. 1524

Appearances:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham and Charles Burlingham for Frederick T. Busk, et al.

LORENZO DANIELS recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

MR. BALDWIN: I would like to have it placed on the record that Senator Spooner has asked for an ad-

1525 journment of this hearing until he returns from St. Louis.

MR. BURLINGHAM: I think in view of the fact that only the examination of Mr. Daniels is to be proceeded with today and no other witness we need not wait for the Senator and he can have the privilege of cross examining when he comes, Mr. Kirlin is in Court this morning and he authorized me to say we had better go on without him.

THE EXAMINER: Senator Spooner's office has tele-
1526 phoned and approved of our going on under the circumstances in the absence of Senator Spooner, reserving for Senator Spooner the same privileges that were granted in previous stipulations.

By Mr. Baldwin:

Q. Now, Mr. Daniels, I show you a letter from Busk & Daniels, under date 13th of March, 1912, to the National Cash Register Company concerning the terms of a contract with that company to carry its freight upon the terms here-
1527 in contained. I will ask you if that constitutes the agreement now subsisting between the National Cash Register Company and Busk & Daniels and if it is still in operation? A. That I cannot say positively; it may have been amended since that date. Practically it is in operation; it contains the gist.

Q. Practically as the terms in this appear? A. The rates may have been changed.

Q. And I will also call your attention to a letter from the National Cash Register Company to Busk & Daniels con-
1528 firming it under date March 21st. These two practically make up the contract with reference to the shipments of the National Cash Register Company to Brazilian ports and other ports in South America? A. As stated, the contract speaks for itself.

Q. That is Exhibit 15 for identification and the letter of confirmation of the National Cash Register Company under date of March 21st, 1912? A. Yes.

Q. Were the rates in this agreement fixed pursuant to a conference at the New York conference? A. The rates were made pursuant to agreement among the lines.

Q. And the provision here that the National Cash Register Company could have the option of shipping by the

Prince and German Lines was also in pursuance of an 1529
agreement? A. Not in anticipation of the agreement but after the agreement was recorded, it was so accepted.

Q. You reported this back to the conference; it was spread upon the minutes and they accepted it? A. I think so, the records will show; it speaks for itself.

Q. And in due course of business as is customary those minutes were sent on to the London conference? A. Yes, sir.

Q. You were asked at a recent hearing to produce the rates for 1908 down to the present time on flour; have you 1530
produced them? A. I have got some memoranda but not in such form as could be tabulated and put on the record.

Q. I will ask you the questions and we can get it that way very clearly. Now, Natal, Parahyba, Pernambuco, Maceio —are they northern ports of Brazil? A. They are the northern ones of the central group.

Q. You usually refer to them as the northern ports? A. No, the northern ports are higher up.

Q. Bahia, Victoria, Rio de Janeiro, Santos and Rio Grande do Sul—are they the middle ports? A. No, the 1531
middle ports stop at Santos and below there they are called the southern Brazilian ports.

Q. Up to 1908 were there fixed conference rates to these respective ports from New York? A. I have the records here from 1908 as near as I can get them. 1907 they were open.

Q. There were no rates fixed in 1907 at all? A. No—open rates.

Q. But in 1908 the conference lines then adopted the fixed rates? A. Yes, rates under agreement.

Q. Made an agreement to that effect. Were the rates 1532
to each one of these ports I have mentioned the same? A. No, they varied.

Q. Were there any number of these ports to which the rates were the same? A. Rio and Santos generally took the same rate.

Q. What was the rate in 1908? A. Santos rate February, 1908, 65¢ a barrel and 30¢ a bag.

Q. 65¢ a barrel? A. Yes.

Q. And 30¢ a bag? A. Yes.

Q. On what line of the conference was that? A. I do not find any memorandum relating to shipments of barrels, but

1533 a shipment of bags was made on the Sieglinde on September 1st.

Q. That was the German Line? A. Yes.

Q. Are you quite right in saying it was 65¢ a barrel? A. That is the memorandum I have here made up by one of my clerks.

Q. Is that the Rio rate? A. The Rio rate is 60¢.

Q. If you are right in reference to the 65¢ a barrel, are you right in reference to the 30¢ a bag. Did not all these rates obtain with reference to flour? A. A barrel or bag.

1534 Q. Is that the standard? A. The barrel or bag are both standards.

Q. Do they both weigh the same? A. A barrel is a standard of 212 lbs. and the bag is a standard of 96 lbs.

Q. That is the reason for the difference in the rate? A. Yes.

Q. What was the rate in 1909? A. The rate appears to have been 45¢ in January and 45¢ throughout the year.

Q. On what line are you now speaking of—the Lamport & Holt? A. We carried very little of it, I don't think we carried any at that rate.

1535 Q. The rate to what port? A. Cabedello, Maceio, Pernambuco, Bahia and Santos.

Q. The rate—was it the same? A. Apparently, yes.

Q. It is only a flat rate of 45¢, but what about the rate per bag? A. I haven't it amongst the figures but I would presume it would be about half.

Q. That seems to be a fluctuation of 20¢ a barrel from the year before? A. It does seem to be that.

Q. As a matter of fact did not the rate fluctuate between 45¢ and 65¢, as reported to the conference? A. My memo-

1536 randum taken from figures that were apparently taken from the shipments at the time by one of the clerks gives me 45¢ to all ports. February—March—it appears to have been raised to Bahia 55¢, Rio $1.00. Reduced again in May 45¢. January and the balance of the year 45¢ all round. 60 Rio Grande do Sul to 65 Rio Grande do Sul.

Q. Is there any difference in the mileage to say Natal, Parahyba and Pernambuco Rio and Santos? A. Natal is the nearest one of the center ports.

Q. How many miles nearer New York is Natal than Rio A. I should say about 1,000.

Q. Then the actual cost of transporting per bag would be

for Company could have the [illegible]

greater? A. The actual cost of burning coal on the steamer 1537
yes, but the port of Natal—if you will let me anticipate your drift—is a port that we have stopped serving on account of the dangers of going in there. We have left it to the Lloyd Brazileiro.

Q. That will have to be stricken out. We will come to each one of these things in turn. You did have a rate in 1909 that embraced Natal and the same rate as you charged for Rio? A. In 1908 is the last Natal record I have; it appears that the *Italian Prince* on August 1st——

Q. Now, Mr. Daniels that will do. I am asking you a 1538
general question and you are attempting to answer by giving me a record of what certain rates were charged on a certain ship. It is perfectly obvious that you can look at the information in front of you and tell me whether or not the rate in 1908 or 1909 was the same to Natal as it was to Rio. It can be answered yes or no and whatever rate it was?

MR. BURLINGHAM: He has answered it—there was no rate in 1909.

MR. BALDWIN: Was there a rate in 1908.

1539

MR. BURLINGHAM: You mean 1909.

MR. BALDWIN: No, he has answered 1909, I mean 1908.

Q. Was the rate in 1908 established by the conference per barrel to Natal the same as it was to Rio? A. I will have to divide your question. I do not think the conference operated to Natal. I think if a boat went in there she went in on her own account and independently. And your second question as to the parity of rates between Natal and Rio I find from the records I have here the Natal rate was 65¢. I 1540
have no Rio but to Pernambuco was 50¢ and it was probably the same.

Q. What was the rate in 1910 per barrel to Rio and Santos? A. It started at 45c.; in April it went to 40—September was 55—October 65 and November 80.

Q. It remained at 80 for how long—during that month and during December? A. My next record shows January 30th next year 70c.

Q. As a matter of fact, Mr. Daniels, didn't the rates in 1910 go as high as 90c.? A. 1910?

Q. Yes? A. My record here does not show it.

1541 Q. That was the rate to Rio and Santos but what was the rate to Pernambuco? A. They are all bracketed as the same rate.

Q. Pernambuco is at least 1,000 miles nearer New York than Rio, is it not? A. Yes, I think about that.

Q. The conference lines were running their boats regularly to Pernambuco in 1910? A. Some of them.

Q. The cost of carrying flour per barrel would be greater to Rio than it would be to Pernambuco? A. Not necessarily.

1542 Q. Do you mean to say that flour being accepted by the conference lines for shipment to the Brazilian ports considers and goes upon the theory that the price of transporting the flour would be as great to Pernambuco, the nearer port, as it would be to Rio de Janeiro, the furthest port? A. I can answer that yes and give you an explanation if you want it.

Q. As a matter of fact then the distance that a shipment of flour is required to be carried is not necessarily an item of the expense of carrying it? A. Under certain conditions where the boat has to perform a long voyage—a long

1543 voyage is the basis of the cost.

Q. Regardless of any other circumstances? A. It stands to reason if the boat makes the full voyage—if she goes full or half empty or stops at an intermediate port, the same cost applies.

Q. The theory really is that the steamship companies figure out the cost to them at some particular port which they call the general port and any intermediate port for which they have shipments they do not consider the actual cost of the transportation of the merchandise for the

1544 nearer port but figure the cost entirely upon what it would cost to carry to the furthest port? A. No, there are more things entering into those figures. If the boat could go to the first port and turn around that would naturally be a great deal, but if the cargo at the first port is not sufficient to load the boat then the furthest port must be the figure as to the cost.

Q. Regardless of theory? A. This is fact.

Q. If you were to charge the steamship itself on an outward voyage with the cargo of merchandise to be distributed at various ports, for the purpose of ascertaining how much it cost to land the merchandise you would find

actually that it cost you less to deliver merchandise at the 1545
nearer port than it would at the further port, assuming that the further port was 1,000 miles further away than the nearer port. Take away the method of how you come to the cost of doing business. I am asking you a concrete practical question whether it would not naturally cost more? A. Do you mean more or less?

Q. Less to the nearer port? A. From a practical standpoint I should say no.

Q. How much more coal would it take to take one of your average steamers to steam from Pernambuco to Rio? A. 1546
Would you let me straighten you out. You are theorizing and not practical.

Q. No. The question of whether I am theorizing is another matter altogether? A. It depends upon how much the steamer burns, the speed and all kinds of conditions—what the coal consumption would be.

Q. Take one of your representative boats. You would have an average knowledge? A. The average steamer 25 tons a day, 250 miles would take her about four days to make the thousand miles, that would be 100 tons of coal.

Q. You would have the same crew on board? A. Yes. 1547

Q. And the wages would continue, of course? A. Yes.

Q. And then their maintenance and support would also continue? A. Yes.

Q. So that as far as the actual result is concerned it would cost more to transport a cargo of any merchandise from New York to Rio than it would to transport it from New York to Pernambuco? A. Yes.

Q. What was the rate that was charged in 1911 to Rio and Santos? A. My records show 70c. January, 80c. February, 90c. December. 1548

Q. And what was the rate to Pernambuco? A. The same rate.

Q. 1912 what was the rate? A. I have my records up to December 1912—January 1911 to December 1912. The last record I think is December 1911—changed to 90c. and apparently that rate is maintained.

Q. You think it was maintained in 1912? A. That was my impression, unless you have something to the contrary.

Q. I have a statement here—I do not know how correct it is—that the rate was 80 and 85 in 1912. Assuming that the rate you speak of continued—did the same rate apply to Pernambuco? A. Yes.

1549 Q. In fact these rates applied practically to all the ports the same excepting Natal? A. All the central ports and we have not served Natal.

Q. You call all these names that I mentioned a moment ago except Natal to be central ports? A. Yes, down as far as Santos.

Q. What about Rio Grande do Sul? A. That is a south Brazil port that only special boats go to.

Q. How about the rates there, are they the same? A. No, they are higher. We have not served the port for a number
1550 of years.

Q. Do you know whether the rates you have quoted for these respective years were the same on all the conference boats? A. They were presumed to be so.

Q. I notice that from 1908, then Mr. Daniels a progressive rise in the rate per barrel going from 30 cents up to $1.10? A. Yes.

Q. Had the actual cost to the carriers increased in the carrying of the flour to the ports? A. Yes.

Q. In what respect? A. The port charges have very ma-
1551 terially increased.

Q. How much? A. They are different charges at each port and different conditions at each port—I can hardly enumerate them in detail.

Q. What percentage would they amount to? A. I cannot give the figures in detail, because the expenses are largely an incident of port charges, of detention expenses of operation in the various ports and coal is nearly doubled in cost at these ports. The cost of hiring tonnage has doubled.

Q. Do you mean to say that the conference lines from
1552 New York to Brazilian ports buy their coal in the Brazilian ports? A. We do on occasions.

Q. If you only buy it on occasions why would the cost of coal enter into these established rates that have gone up from 30 cents to $1.10? A. Because we consume coal in operating our boats and the value of that coal naturally is a factor of the cost of running.

Q. What were you paying per ton loaded for your bunker coal in 1908 here in New York? A. You will have to allow me to prepare myself for these questions. I should say, roughly, $3.00 per ton loaded into bunkers.

Q. Loaded into bunkers? A. Yes, roughly, $3.00 or say $3.25 to $3.40, probably.

Q. How much did it cost in 1909? A. I should take the same basis. New York has not materially gone up—10 or 15 cents. 1553

Q. The cost of coal in New York has not gone up materially? A. No, not materially.

Q. So that, in estimating the actual cost of running your steamships from New York to these Brazilian ports, the cost of coal is not a material factor? A. Yes, sir.

Q. From New York? A. Yes.

Q. If the cost of coal loaded in your bunkers has not particularly increased how then has it increased the cost of running the steamers to the Brazilian ports? A. Because if we could buy our coal in Brazil at a reasonable price we would not carry it from New York for the round trip. It is all figured out on the basis of reasonable values. It would pay us better to take cargo from New York and get our coal in Brazil for the return trip if it could be obtained at a reasonable figure. 1554

Q. I asked you how, if the price of coal has not increased in New York, it would increase the cost of running a vessel from New York to the Brazilian ports? A. In running to the Brazilian ports we have to figure getting away from the Brazilian ports and we figure whether it pays us better to take the stuff on steamer when we have New York to get back to. 1555

Q. You have been confronted with that? A. Yes.

Q. So that in 1908 you had the same conditions with reference to getting back coal from your return voyage that you had in 1912? A. The same in 1912.

Q. The cost of coal was not greater? A. Yes, very much greater in Brazil.

Q. You mean to say that if you can pack your bunkers with sufficient coal to make the return trip and the cost of the coal is precisely the same that obtained in 1908 as it did in 1912, that the actual cost to the steamship company in making the voyage and return has increased? A. Yes. 1556

Q. How? A. Because we put the extra coal in the cargo space of the boat and not the bunkers and——

Q. But you did in 1908?

MR. BURLINGHAM: Let him finish.

MR. BALDWIN: No.

MR. BURLINGHAM: He has got a right to go on.

1557 A. And some times we do not take enough to bring us back to New York and we buy coal in Brazil when the cargo pays us better than the coal. We use the price of coal in Brazil as the governing factor.

Q. What? A. The governing factor for the surplus coal taken in New York.

Q. In other words in order to determine how much your coal actually costs you in determining the cost of running the voyage you take the price of coal in Brazil instead of the price of coal in New York?

1558 MR. BURLINGHAM: He has no knowledge of that.

MR. BALDWIN: If he has not let him say so. (To the witness) Is that right?

A. Indirectly right.

Q. That was true in 1908? A. Yes.

Q. And that was true in 1912? A. Yes.

Q. If it was true in 1908 and also true in 1912 how could it be that the actual cost has in any way changed? A. Because we are obliged to figure the basis of our space and
1559 the value of our coal on a higher basis.

Q. Was the coal higher in Brazil in 1912 than it was in 1908? A. Very much so.

Q. How much? A. I should say at least 10 shillings to 12 shillings a ton higher.

Q. A ton? A. Yes.

Q. You want us to understand that you were sending your ships from this port to the Brazilian ports with a knowledge in advance of the possibility of your taking coal on at the Brazilian ports at an enhanced price of 10 shillings to 12 shillings a ton? A. Yes, we do that.

1560 Q. Although you knew you could fill your bunkers here in New York with coal that cost you loaded somewhere between $3.00 and $3.10 a ton? A. Your figures are lower than I gave you for "loaded" in New York.

Q. What are they? A. $3.00, $3.30 to $3.45.

Q. That was very materially lower than the Brazilian costs? A. Very materially.

Q. About one-third was it not? A. Roughly.

Q. Your policy is not to run your steamships from New York to the Brazilian ports and return at the least possible cost to the owners—is that it? A. No. We do run them at the least possible cost to the owners.

Q. If that is so how would you be justified in buying coal 1561
at the Brazilian ports that costs you three times as much as it does in New York when you have bunker space enough to fill in New York? A. We put say, 1,000 tons in the main hold of one of our steamers to Rio, with the idea of transferring that coal from the main hold in Brazil to the bunkers, using the main hold back for cargo. In New York when we sent it away for cargo the main hold would pay us say $8.00 a ton—that is $8,000 for the 1,000 tons of space we could get in New York. We figured whether it was more economical and better business for the company 1562
to decline that $8,000 worth of revenue and buy coal, and put it in and carry it down there and transfer it as a better business proposition. It is purely a business proposition in dollars and cents.

Q. What do you mean by transferring? A. The bunkers of the ship are generally around the ship in places that are not practicable for cargo.

Q. Then this would be characteristic of each particular ship—that condition? A. Yes.

Q. In other words when a ship was about to depart or was at the berth here you would then ascertain whether 8563
the amount you could get for this hold space that you usually put coal in would justify you in taking the freight or whether the cost in Brazil of coal would be so great that you would be justified in refusing it? A. Yes.

Q. That would depend on each boat and the conditions that obtained at the time? A. Practically yes.

Q. That did not always obtain? A. It has practically obtained always. There are a few cases where we have thrown out coal and taken cargo on. They have been very rare.

1564

Q. You usually approved of the theory that it is cheaper to take coal and refuse the freight? A. Yes, that has been our general experience.

Q. Do your boats generally go out full? A. Practically.

Q. Have not you made representations right through to the conference to the effect that your boats were not going out full? A. Very rarely. We nearly always go full. I say practically full.

Q. Take the last year, 1912, the rate went up to $1.10? A. 90 to Rio and 1.10 to Santos.

Q. Were the Lamport & Holt boats going out full of

1565 cargo to these ports at that time? A. Practically full. We very rarely go out with any space.

Q. You remember testifying before the Congressional Committee with reference to the amount of tonnage the Lamport & Holt Line carried to Brazil in 1912? A. I do not recall in detail but if you have the particulars it would refresh my memory.

Q. You remember testifying as follows?

MR. BURLINGHAM: Are you reading from a printed record?

1566 MR. BALDWIN: I am reading from an extract and I know it is a copy of the printed record. It is on page 183: "All our freight and all our contracts are taken on the basis of one-third each but in the actual carriage of business the Prince Line people I believe carry a great deal more tonnage than any of the other two conference lines—a great deal more than we have. We have carried very little Brazil tonnage the last year or so."

1567 Q. Do you remember testifying to that effect? A. Yes.

Q. How do you square that with your statement that most of your boats have been going out full in the Brazilian trade? A. My statement there is regarding the volume of trade. We carry a very small volume of the Brazilian trade.

Q. So far as the Brazilian trade is concerned from these ports the Lamport & Holt in the year 1912, although charging 90 cents per barrel to Rio, were not practically concerned about the price of coal in Rio—were they—in fixing
1568 the cost? A. Most of our boats of that period went through to the Plate—the terminal port in Buenos Aires. Two of them terminated in Brazil—two of the same boats terminated the voyage in Brazil, they did not go any further.

Q. Then although you fixed the rate of ninety cents per barrel to Rio the cost of coal in Rio cut no figure in the calculation of the costs? A. Certainly it did. I have testified to that right along.

Q. Upon the theory that it was more judicious for you to take cargo rather than coal for the return trip? A. We have always found it more economical and judicious and more benefit to the owners of the line, the company and the boat——

Q. I am not asking about anybody except the owners? 1569
A. (Continuing) to take the necessary amount of coal to bring us back part of the way to New York.

Q. Why not all the way? A. Because sometimes we can pick up coal in the West Indies cheaper.

Q. Why don't you figure the possible cost of coal in the West Indies on any voyage? A. We do. Sometimes we stop outwards at the West Indies and buy coal, so that coal is a big factor all along the line—the price of coal.

Q. You spoke a moment ago about the rate of coal in Rio being about twelve shillings higher in 1912 than it was in 1570
1908? A. That is my off-hand impression. If you have any figures, that would show.

Q. Do you remember whether in 1908 that you filled up with coal for the round trip or did you then buy in Brazil for the round trip? A. We do as a rule find it more economical to take the majority of our return trip coal here, and we did find it so for a number of years.

Q. Regardless of the price in Brazil? A. No—all figured on the question of values.

Q. If in 1908 the price of coal per ton in Brazil was 1571
twelve shillings nearer to the price of coal in New York than it was in 1912, why was it that you filled with bunker coal for the return trip in New York instead of not taking advantage of the lower price of coal in Brazil and filling your holds with cargo on the outward trip? A. Because in 1908 our cargo rates were very low.

Q. As high as 65 cents a barrel? I call your attention to a letter of the 13th of March, 1908, addressed to Busk & Daniels by the Lamport & Holt—Exhibit No. 140 for identification—the paragraph of which with respect to the *Tennyson* is as follows: "It came as a great shock to us to 1572
find that you had not made up this steamer's bunker coal to a sufficient quantity for the round voyage. Your not having done so shows a great lack of thoughtfulness as with the steamer going out with half a cargo it must have been patent to you if you had given the slightest attention to the matter, how great an advantage there is in buying coals in New York instead of abroad." Do you remember that? A. That is so—that is right. „

Q. I show you the letter and the paragraph. Is that the letter and the paragraph. Is that the one? A. I accept it.

1573 Q. Take the instance of the *Tennyson* mentioned in this letter you did not have a full cargo and yet you did not provide bunker coal for the return trip, and your principals complained of it, didn't they? What was your object in that instance at least of not having provided for that—although at Rio coal was selling at twelve shillings less a ton? A. I think that incident applies simply to a case of not having put in the extra 100 tons or 150 tons she would take at Barbados north bound—nothing to do with what she would take in Brazil.

1574 Q. You think that is what this letter refers to?

I offer in evidence as speaking for itself the whole of this letter.

Marked Petitioner's Exhibit 140.

Q. If the Lamport & Holt were carrying very little volume of tonnage to the Brazilian Ports in 1912, then they must have been taking on their coal having in view some other ports than that of Rio? A. Boats that go to Brazil take it on with the view to the Brazilian terminals, and the
1575 boats that go to the other countries take it on with the view to the proposed port—that is the terminals they stop at.

Q. Then if the amount of the tonnage the Lamport & Holt was carrying to Brazil in 1912, was very little, as you testified to before the Investigating Committee of the House of Representatives, then your line at least could not have considered the cost of coal in Rio or Brizilian ports of any great importance in fixing the rate of 90 cents up to $1.10, could it? A. I have testified it was contributory.

Q. But only in a very small degree? A. As the figures
1576 show.

Q. You meant what you said when you testified before the House of Representatives when you said "We have carried very little Brazilian tonnage in the last year or so"? A. That was the statement I made and it is a correct statement.

Q. What is the Lamport & Holt boat Line dock here in New York? A. Pier 8, Brooklyn.

Q. Have they docked there since 1908? A. Yes, or the piers in the immediate vicinity.

Q. Who owns the docks? A. The New York Dock Company.

Q. Under what terms and conditions do the Lamport & 1577
Holt dock there? A. We pay wharfage.

Q. Do they have an annual contract? A. We have one pier under an annual lease.

Q. Which pier? A. Pier 8.

Q. How long have you had it under an annual lease? A. Ten years possibly. I have not the data.

Q. Do you advertise your boats to start from these particular piers you have either under lease or under contract? A. Sometimes we do—yes.

Q. Do your regular boats leave from this pier that you 1578
have under an exclusive lease? A. Passenger boats do.

Q. And the freight boats—where are they advertised to sail from? A. Some sail from that pier and some from different piers.

Q. Belonging to the same Docking Company? A. Yes, generally.

Q. Is that pursuant to a joint contract that you have with them? A. Yes and no. We naturally dock at piers we have under a yearly lease, and if we dock there we naturally sail from there.

1579

Q. I show you Exhibit 118 "Notice to Shippers From Santos." You are familiar with this notice? A. No. I have only seen them.

Q. You had copies sent you by your principals? A. Yes.

Q. You keep copies on your files? A. Yes, we have had them copied.

Q. You received a copy of that Exhibit 118, and did you also receive from your principals a copy of Exhibit 119 "Notice to Shippers From Rio and Victoria"? A. Without positive knowledge, I take it for granted we did.

Q. I now hand you Exhibit 102—a letter of July 18th, 1580
1908, from Lamport & Holt. Isn't that the letter which accompanied this Exhibit which you just identified? A. I should take it as such.

(Marked Petitioner's Exhibit 102.)

Q. You have been asked to produce a letter of 30th September, 1908, from Lamport & Holt to yourselves. Have you produced it? (Witness produces letter and hands it to Mr. Baldwin.)

I offer in evidence the letter of September 30th,

1581 1908, to Busk & Jevons from Lamport & Holt to which is attached a copy of a supplemental notice referring to "Shippers From Santos," Exhibit 180. (Marked Petitioner's Exhibit 180.)

Q. The Notice attached to the last letter, with the exception of signatories of certain shippers, is an exact copy of Exhibit 123, which last Exhibit I now show you. You know the signatories to this notice? A. No, sir.

Q. None of them? A. No, sir.

1582 Q. Know who they are? A. Only know in a general way.

Q. I am now reading from Exhibit 123 under the heading "Approved." Do you know Naumann Geppe Co., Ltd.? A. They are a Brazilian firm, I think.

Q. Shippers to American Ports? A. I think they are coffee shippers.

Q. Have been shippers with the Lamport & Holt Line? A. I think so. I have seen their goods.

Q. Michelson, Wright & Company, Limited? A. I do not know them, but I presume they are of the same character.

1583 Q. All shippers from Brazil to American ports? A. I should imagine so.

Q. Their name ocasionally appears among the shippers by the Lamport & Holt Line to New York? A. Without positive knowledge I should say so.

Q. That is you best recollection? A. Yes.

Q. Halworthy Ellis & Company? A. Yes—same character.

Q. Shippers over your line? A. Yes.

Q. Also coffee shippers? A. I understand they ship coffee exclusively.

1584 Q. I will read them all? A. I accept them all.

Q. All the names whose signatures appear on Exhibit 123 at the end after the word "Approved" are all shippers of coffee to New York over the conference Lines including the Lamport & Holt Line? A. So I understand.

Q. Are those names which appear Santos firms or Rio? A. Again I could not answer that. I am not familiar.

Q. All the rebates that have been paid since 1908 to shippers in the Brazilian ports to American ports have been paid under these notices and agreements Exhibits 118, 119 and 123, have they not? A. I am not familiar with the business at all.

Q. When you received this Exhibit No. 180, enclosing 1585
this "Shippers' Notice," you read it, didn't you? A. Yes, sir.

Q. You kept it on your files ever since haven't you? A. I presume so, although I do not know.

Q. Your firm has paid rebates to firms here in New York under authority from your principals in Liverpool? A. We do not know what they did. We know nothing about that proposition.

Q. You knew there were rebates? A. They told us they were payments applied to rebates. 1586

Q. You never considered whether or not they were under this agreement—never occurred to you? A. Never—never interested enough.

Q. You were asked at a recent hearing to submit a statement from your books concerning the payment of rebates. Have you got that? A. Yes, sir, I submit them. I want to submit them and the letters that went with them, and the other data you asked for at the time.

Witness handed papers to Mr. Baldwin.

Marked Petitioner's Exhibit 181 for Identification. 1587

Q. You were asked for a list of the regular and chartered sailings of the Lamport & Holt from New York to Brazil from 1906—in 1906 and 1907? A. Yes, sir, I present them, and also for the years 1908-9-10-11-12.

Marked Petitioner's Exhibit 182 for Identification.

Q. You were asked to produce a statement showing the tramp steamers or other boats not belonging to any regular lines that loaded at New York or Philadelphia for the 1588
transportation of freight to Brazil during 1908 and 1909-10-11 and 12. Have you got them? A. I asked Mr. Goodwin to make that up for me and he is unfortunately sick.

Q. You were asked to prepare a copy of the cable mentioned in the letter of February 19th, '08, from Busk & Jevons to Lamport & Holt. Have you got that? A. Yes.

Marked Petitioner's Exhibit 183 for identification.

Q. You were asked for all the cables from Lamport & Holt to Busk & Daniels referred to in the letter of May 18th, 1909. Did you get those?

1589 MR. BURLINGHAM: We have hunted for them everywhere but cannot find them.

Q. You were asked to produce the cable of May 5th, 1909, from Lamport & Holt to Busk & Daniels? A. I have not got it—we cannot find it.

Q. You were asked for a copy of the cables from Busk & Daniels to Lamport & Holt referred to in the letter of May 18th, 1909.

MR. BURLINGHAM: We have not found them either.

1590

Recess taken until 2:00 o'clock p. m.

AFTERNOON SESSION.

LORENZO DANIELS recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Daniels, are you acquainted with the firm of Arbuckle Brothers in New York? A. Yes, sir.

Q. They are very large importers of coffee? A. Yes,

1591 sir.

Q. From the Brazilian ports? A. Yes, sir.

Q. And have been for a good many years? A. Yes, sir.

Q. You had back in 1908 some correspondence or communication with Arbuckle Brothers, did you not, with reference to having them ship coffee from the—over the conference lines? A. I don't recall, but there has been such correspondence and if you have it to refresh my memory——

Q. Well, do you remember of calling upon any member

1592 of the firm of Arbuckle Brothers in 1908, with reference to their shipments? A. I don't remember the date—I have called on Mr. Jamison.

Q. You were making an effort, were you not, to get their shipments for the conference lines, which, up to February 29, 1908, you had not been able to accomplish? A. I don't recall the dates but——

Q. As a matter of fact, you know, do you not, that they were shipping their coffee from Brazil over the competitive lines, and also were chartering their own steamers to bring in coffee, don't you? A. I don't recall dates.

Q. You had that general knowledge that up to 1908, that

was true? A. They were for many years the largest ship- 1593
per over our line.

Q. That was sometime prior to 1908? A. The records will show; I have not the date in mind.

Q. Isn't that true? A. If your records are that way, of course, it is true.

Q. Well, was it sometime in or about 1908 you made an effort to get their shipments? A. I presume so, without having the data in front of me.

Q. And it was due to the fact that for some reason or another the firm of Arbuckle Brothers had refused to ship 1594
any of their coffee over the conference lines? A. Presumably.

Q. I show you a letter of February 29, 1908, addressed to Messrs. Lamport & Holt, Liverpool, and signed Busk & Jevons, and ask you if that is a copy of a letter which you did send to the Lamport & Holt Line? A. I accept it; it is taken from our records.

(Showing witness Exhibit 40 and 41 for identification.)

MR. BALDWIN: I offer so much of the letter in evidence as to include the date, the caption——

1595

MR. BURLINGHAM: What is the date?

MR. BALDWIN: February 29, 1908. And beginning with the words, "Arbuckle Brothers" on the second page, all of the third page and all of the fourth page down to the word "New Orleans" and the signature.

MR. BURLINGHAM: May I glance at it. (After examination of paper.) All right.

Marked Petitioner's Exhibit 40.

Q. Now, having read this letter, Mr. Daniels, your memory is now refreshed somewhat, is it not, as to the Arbuckle 1596
situation here? A. I do not recall very many details about that time.

Q. But, you do recall that up to that time the conference lines were not getting the patronage of Arbuckle Brothers? A. I presume so, yes.

Q. And you learned from some source that their transportation arrangements were open, meaning by that, it would be a propitious time in which to make an effort to get their business; is that right? A. It looks so, yes, sir.

Q. Now, did you have a reply to this letter from Lamport & Holt? A. I again do not recall.

1597 Q. Do you remember whether or not you did make them a proposal as you stated—as you suggested in this letter. You say here they have invited us to make them some proposal and we want to know whether you care to authorize us to do so. Did you make any proposal to them? A. I presume that we tried at that time.

Q. That is not my question; did you make any proposal? A. I would make no proposal independently; it would be an authorized proposal if I made one.

Q. That may all be true, but did you make a proposal?
1598 A. I think we did.

Q. In order to make this proposal, that is the reason you wrote this letter to Lamport & Holt to get authority? A. I presume so.

Q. Do you remember what the proposal was that you made to them? A. I cannot remember in detail, but I can remember the character of the proposal that we have made to them on several occasions, and I presume it would cover that one, because it has been the same proposal right along; that our people would be glad to enter into a contract with them on the same terms that we carried anybody else's.

1599 Q. That is, to the effect that if they would confine all of their shipments to the conference lines, you would make a contract with them? A. I made no detail arrangements here.

Q. That was one of the conditions here, Mr. Daniels, was it not? A. I think I made no specified conditions at all.

Q. Well, are you prepared to say now that included in your proposal to the firm of Arbuckle Brothers was not a provision that you would take their business providing—and at rates which you would agree to—providing they
1600 would confine all their shipments to the conference lines? A. As I remember the proposals which have been made they have been in the same order at all times; that the line would be willing to contract with them, or carry their shipments from Brazil on the same terms that all other shipments from Brazil were taken.

Q. Do you now say under oath that you did not make the verbal statement to some person representing Arbuckle Brothers that you could make satisfactory terms with them if they could agree to confine all their shipments to the conference lines? A. I think that I can say not in detail.

Q. Now, did you or not; answer that yes or no? A. Not to my recollection, no.

Q. It was never suggested to Arbuckle Brothers by you 1601
or any person connected with your office that one of the conditions was that they must confine their shipments to the conference lines; either verbally or in writing? A. The conditions were that the same conditions as prevailed in Brazil for other people——

Q. Was one of the conditions that you mentioned to them that they should confine their shipments in order to get flat rates that were satisfactory to the conference lines? A. I think those are the published conditions in Brazil, but I do not think it was brought out especially in any negotia- 1602
tions with them.

Q. You say "especially"; will you say whether it was in correspondence or verbally referred to in any way, that that was a condition? A. I think that condition is part of the printed conditions; it was understood; whether it was referred to, I don't recall.

Q. Well, you understood that whatever proposal you did make to Arbuckle Brothers was that they should confine their shipments to the conference lines, the same as other shippers? A. I think that is the condition the other ship-
pers ship on; that was the condition made to Arbuckle 1603
Brothers.

Q. Do you mean to say that all of the shippers make agreements to that effect? A. I think practically.

Q. And that is the only terms under which you will make agreements, time agreements, is it not? A. No, I am not very familiar with the Brazil end of the business. I think that is the testimony which has been given here by one of the shippers that there are exceptions to that. I can only go by the testimony that you have on record.

Q. You must have some personal recollection of that 1604
which you yourself did?

MR. BURLINGHAM: He has testified to that.

THE WITNESS: I have testified to my recollections to that.

Q. What was the reason up to that time that you had not been able to get the business of Arbuckle Brothers? A. They want better terms than anybody else in the trade.

Q. Better than the amount that they were able to pay? A. No, they wanted better conditions.

Q. What were the conditions that they wanted that varied

1605 from the conditions anybody else wanted in the trade? A. They did not want to accept the same conditions as other people.

Q. That is to say, they did not want to confine their shipments to the conference lines, is that it? A. No, my recollection is more especially our last dealing; I don't recall 1908 at all in detail.

Q. Well, in response to this last letter, February 29, 1908, you did make a proposal to Arbuckle Brothers and for some reason or another you did not get the business? A.
1606 Presumably.

Q. What was done further during 1908? A. Nothing to my knowledge.

Q. Was the subject taken up again in 1909 with Arbuckle Brothers? A. Not to my recollection; my recollection is that in 1911, during the time that the Federal Jury was asking for our books and the references that you have.

MR. BALDWIN: I ask to have that stricken out.

Q. The question that I asked could have been answered
1607 without going into the history of the subsequent date; I am asking about 1909? A. I do not recall.

Q. Well, do you remember whether or not that at any time after this letter, Exhibit 40, was written, that any suggestion was made by either you or the other agents of the conference here in New York to Arbuckle Brothers, that no arrangement could be made with Arbuckle Brothers unless they would cease sending their coffee over the Lloyd Brazileiro or other competing lines? A. Not to my recollection.

Q. I show you a letter of May 4th, 1909, from Arbuckle
1608 Brothers to Busk & Daniels; have you seen that letter? A. I presume I saw the letter; it is addressed to us.

Q. You remember such a letter being received after having read this? A. I do recall having seen such a letter.

MR. BALDWIN: I offer that in evidence.
Marked Petitioner's Exhibit 184.

Q. When you received this communication from Arbuckle Brothers what did you do about it? A. I think we replied to it that all those details were handled at the Brazil end.

Q. Did you refer this fact to the New York conference? A. No, sir.

Q. You did not? A. No, sir. 1609

Q. Did you discuss it at all with the other conferee lines here? A. No, sir.

Q. Did you report it to your principals? A. I presume we would.

Q. Mr. Daniels, you know who Mr. Jamison is, don't you? A. Yes.

Q. Representing Arbuckle Brothers? A. I understand he is the managing partner.

Q. I show you a letter of May 4th, 1909, addressed to Arbuckle Brothers, signed Busk & Daniels, is that the reply you made? A. I should presume it was. 1610

MR. BALDWIN: I offer that in evidence.
Marked Petitioner's Exhibit 185.

Q. Do you remember having a talk about the time that you sent that letter or immediately after with Mr. Jamison over the phone? A. I do not remember.

Q. Do you remember making any statement to him about —do you remember his complaining to you that you had not answered the question as he put it in the letter? A. I do not remember in detail. 1611

Q. Well, now, did you notify your principals the substance of this complaint to the effect that Arbuckle Brothers had tendered coffee on steamers that had room to spare at the time of sailing, and had offered the current rate, and had refused to take coffee under the circumstances that unless they guaranteed to leave the Lloyd Brazileiro? A. I do not recall; I presume that is a copy of Arbuckle's letter to the home office.

Q. Do you remember sending any cable on the subject? A. I do not remember; we may have done so, although I think not. 1612

Q. Well, didn't Arbuckle Brothers tender full rates for shipment of coffee that had been tendered? A. I could not answer as to what they did in Brazil.

Q. And you had knowledge along about May 4, 1909, that they had tendered coffee to be shipped to New York on your conference lines, and that your company and the other conference companies refused to take it unless they left the Lloyd Brazileiro; do you understand the question?

MR. BURLINGHAM: You had no knowledge.

1613 THE WITNESS: I don't recall; it would only be general knowledge if I had any.

Q. Well, you got some knowledge from this letter of May 4? A. As I say, it would be only general knowledge or inference.

Q. Weren't you informed immediately after that letter that they had offered coffee, and offered to pay full rates, and your steamers declined to take it? A. I do not think I was so informed.

1614 Q. I show you what purports to be a copy of a cablegram from Busk & Daniels to Nifmore, dated May 4, 1909, and ask you whether that is a copy of a cable which you sent? A. If it is a copy of our record I accept it as such a cable; it is presumably correct.

MR. BURLINGHAM: It is correct.

THE WITNESS: I accept it if it is a copy from our records.

Q. You have no doubt? A. Not at all.

1615 MR. BALDWIN: I offer this in evidence.

Marked Petitioner's Exhibit 88.

Q. That address of Nifmore is the address of whom? A. Lamport & Holt.

Q. Where? A. Liverpool.

Q. Does that refresh your recollection now to know whether they had offered full rate to have your steamers take their coffee? A. Apparently this was sent as a result of some interview with Arbuckle; I don't recall the inter-

1616 view nor the facts.

Q. You have no doubt, have you, after having read this Exhibit 88 that Arbuckle Brothers did offer full rates, and wanted to know whether you would take their goods or whether you would refuse them? A. I have no direct knowledge other than what that shows.

Q. Well, that refreshes your recollection, does it not? A. The rates would be offered in Brazil; I have no knowledge.

Q. Well, have you any knowledge and doesn't this refresh your recollection—perhaps if I read it paragraph by paragraph you will. It says: "Arbuckle & Company (Ar-

buckle Brothers) ask whether you will accept full rates such coffee as they wish to ship conference steamers or if you refuse their goods entirely." Now, doesn't that refresh your recollection to know whether or not they had offered coffee to ship and offered to pay full rates? 1617

MR. BURLINGHAM: I object now; he has stated what happened in Brazil; he cannot have his recollection refreshed about such a matter.

Q. Can you answer that question or not, regardless of what counsel says? A. The document speaks for itself. 1618

Q. When you sent this telegram where did you get your information which you have repeated in this cablegram to the effect, that when they asked the question whether you would accept their coffee if they offered full rates? A. I don't recollect the details of that at all; you can draw any inference you like.

Q. Now, you further say: "We recommend you to try to avoid complications, unfriendly, immediate reply most important. Enable us to reply ahead Byron mail outwards." What complications did you have in your mind at that time when you sent this cable? A. Without being at all positive as to the conditions it must have followed some conversation possibly, as you say, over the telephone with Mr. Jamison, and he wanted to write out to his Brazil house for instructions, and he wanted us to get an answer to that cable so he could write to his Brazil house. 1619

Q. What complications would that entail upon the conference lines when you say "complications unfriendly"? A. Any unfriendly act is unfriendly.

Q. Had they threatened an unfriendly act of any kind? A. That I cannot recall, but I should imagine so. 1620

Q. Had they threatened you to the effect that they would bring a suit under the Sherman Act for damages? A. Not to my recollection.

Q. Now, did you get a reply to this cable? A. That I don't recollect unless you have the record.

MR. BALDWIN: I show you what purports to be another cablegram from your firm to your principal under date of May 5, 1909; did you send that cablegram? A. If it is a copy of our record I accept it as such.

1621 Q. Now, Mr. Daniels, don't let's fence on this, is it a copy or not?

MR. BURLINGHAM: It is a copy.
THE WITNESS: It is a copy, certainly.
MR. BALDWIN: I offer it in evidence.
Marked Petitioner's Exhibit 89.

Q. You sent this cable, because you had not heard from your principal; had you any answer to Exhibit 88? A. I should judge so; I cannot recall definitely, but it sounds
1622 that way.

Q. In the meantime had you gone to Arbuckle to get them to await taking any action of any kind? A. It also looks that way; I don't recall the instance.

Q. Now, having seen this last cablegram, is your memory refreshed so you can state what kind of a threat it was that Arbuckle Brothers had mentioned to you? A. I don't even recall that they made a threat; I don't think they did.

Q. This reads, "Arbuckle Brothers agree wait for a few days before acting. What proposal may we make. We
1623 think arbitrary position dangerous commercially and legally." What had you said to Arbuckle Brothers that they agreed to wait for a few days? A. I don't recall at all.

Q. And what was the position that you thought was dangerous both commercially and legally? A. On the general position that any opposition might develop from a small beginning to proportions; one don't anticipate.

Q. In what sense would opposition be dangerous; they were not shippers, were they? A. Some people were willing to lose a lot of money just for fun.

Q. That would go to the commercial side of it; what
1624 about the legal side? A. I throw up my hands; I have not the faintest idea about the legal side.

Q. So, when you used the words "dangerous legally" you did not know what that meant, and just threw up your hands and used it; is that the idea? A. It is a very ambiguous term.

Q. Well, Arbuckle Brothers did wait, didn't they, before they took any step? A. I do not recall anything in detail of that negotiation at all.

Q. These few exhibits that we have just shown you still don't refresh your recollection? A. No, as to any details.

Q. Now, do you remember whether you got any answer

up to May 5th from your principals to these cables? A. 1625
I do not recall; the records will show.

Q. Well, as a matter of fact, you did not get any answer, and so the position got so acute you wrote them, didn't you? A. I don't recall.

Q. By the way, didn't you actually receive a cablegram on May 5? A. Your records will show; I do not recall.

Q. Weren't you directed to produce a cablegram which you had not provided.

MR. BURLINGHAM: We have searched for it and have not been able to find it. It was called for in a 1626
previous subpoena dated December 27th, 1912, under call number 41.

MR. BALDWIN: I may suggest for the benefit of counsel that I have a letter here dated May 7th, in which Mr. Daniels refers to a cablegram of the 5th instant, so you must have had it.

MR. BURLINGHAM: Yes, but we cannot find it.

MR. BALDWIN: What has become of the cable book of that period?

MR. BUBLINGHAM: As we explained the other day there is not a complete set of cablegram books and 1627
we can find nothing of that date. Some are loose cables and some cable books.

Q. Now, I show you a letter of May 7th, 1909, from Busk & Daniels, addressed to Lamport & Holt, and ask you whether or not that is a copy of a letter that you sent to your principal concerning the Arbuckle matter? (Handing witness paper.) A. It appears to be.

MR. BALDWIN: I offer that in evidence.
Marked Petitioner's Exhibit 87. 1628

Q. Now, Mr. Daniels, after having read this Exhibit 87, can you state subsequently what the contents of the cable was that you received from your principals, which you did not disclose to Arbuckle? A. I cannot; I have no recollection at all of it.

Q. What did you mean when you said that you had not shown them the cable, fearing a hasty action on their part? A. I presume the wording of the cable was not exactly conciliatory.

Q. Was it not due to the fact that if you had shown the

1629 contents, or made known the contents to Arbuckle Brothers, that they would fulfill the threat to bring an action under the Sherman Act? A. No, not at all; I should think from general experience and knowledge, that the cable came in in what we would call unfortunate language. It would make them personally angry more than anything else.

Q. Is there anything in it derogatory to Arbuckle Brothers? A. No.

Q. Why should they be angry? A. Once in a while our cables are not couched in as polite language as they should
1630 be.

Q. Cables, as a rule, are very short? A. Yes.

Q. And you think it was possible in such brief form, that they would be angry, and you would have difficulty in having them hold their hands; is that what you mean? A. No, my recollection of similar cables is that if the language is not conciliatory, it would lead to friction more than anything else.

Q. In not yielding to the demand of Arbuckle Brothers to take their freight? A. No, simply the langauge that the cable might come in; that is all.

1631 Q. And by reason of that then you thought that it was not wise to show the cablegram to them, fearing that they might take some hasty action? A. I feared it might cause friction.

Q. You did not say "friction" you said "action"; what action? A. Well, if they got angry, I don't know what action they would take.

Q. Well, you did want to make some proposal to them yourself? A. Personally I would have liked to have their shipments to help fill our steamers.

1632 Q. What did you refer to when you sent this letter, Exhibit 87, that you would like to make a proposition acceptable to both parties? A. I think those words cover the idea exactly.

Q. What did you have in your mind; what was the proposal that you wanted to make? A. I could not make any proposal, I was only acting as a middle man.

Q. Did you have any idea at all that you suggested to your principals? A. I don't think I made any suggestions at all at any time.

Q. What position was it that Arbuckle said they would not allow themselves to be forced into contrary to their

wishes, as stated in this letter? A. Well, will you allow me 1633
to make a complete explanation of that.

Q. If you can state what it was? A. I can state what leads up to it.

Q. If you—no, I asked what they stated? A. To my knowledge, I have no recollection.

Q. You evidently speak—when you say they would not allow themselves to be forced into action contrary to their wishes, what did they say about it? A. That would be merely my opinion.

Q. What position did anybody suggest to them or try to 1634
force on them that they would not assume; what was their position? A. The position is just this——

Q. No, what did they say? A. I know what the position is from general knowledge.

Q. I don't want any statement of general knowledge—I want to know the negotiations that induced you to write his letter? A. I don't recall those negotiations at all.

Q. What was said or what occurred between you and any of the representatives of the Arbuckle Company with reference to this business which caused you to say these 1635
words, "But would use all their endeavors and strength the other way about; unfortunately this happens to be quite material and capable of accomplishing probably more than any other single house in the coffee business"? A. I should gather that that was entirely on account of Arbuckle being worth about fifty million dollars and if they wanted to scrap a thing out, and have their own way, they would be formidable people to scrap with.

Q. There would only be a scrap growing out of the deprivation of a right in some way; you don't mean to say 1636
simply because your line refused to take their shipments that they invited a scrap? A. No, I thought if they wanted to scrap, they would have money to fight with.

Q. They would have to have a legal ground? A. No.

Q. They could just start litigation without right or wrong.

MR. BURLINGHAM: I object; there are all kinds of scraps.

THE WITNESS: I don't think I am qualified to answer a question of that kind.

1637 Q. You further say, "We do not think that you can ever openly make them bow to defeat, but that any measure of success must be taken through conciliatory channels." In what sense were you people trying to compel them to bow to defeat? A. We had had a difference of opinion for a number of years as to how the business should be run. This same difference of opinion existed at the moment that you are speaking of. It consisted of Arbuckle Brothers wanting to handle their business entirely different from any other of the coffee merchants, to use certain facilities of
1638 storage and expenses that they were able to secure in Brazil, different from any other houses and in some way did their best to get an advantage and compel us to give them an advantage over any other shipper in the trade.

Q. Now, what were those advantages in 1909, when they offered to pay the full rates—just mention them? A. I cannot recall in 1909 distinctly, but I recall the negotiations of a year later.

Q. Now, I will come down to that; I am speaking of when you wrote this letter? A. The same conditions existed then
1639 as existed a year later.

Q. What were the existing conditions in 1909, that you said they were trying to get some advantage? A. You must ask them; I don't remember at that time.

Q. Well, if they were attempting in 1909, to take some advantage in some way, why, if they were defeated in that attempt would that give them a right to bring any action of any kind.

MR. BURLINGHAM: It is not suggested, is it?

MR. BALDWIN: I am suggesting it.

1640 THE WITNESS: I am not qualified to answer that question.

Q. Well then, now about that time you thought it was necessary to get the opinion of a lawyer, didn't you? A. Presumably.

Q. On the legal side? A. The letter shows it.

Q. Now, you further say: "Furthermore we thought it worth while to take up the legal side with Mr. Putnam, and Mr. Putnam is of the opinion that legal complications are possible, and that Messrs. Arbuckle could sue for damages, even triple damages here, if the conference forced them to

such a position." Now, the question at issue, between you, 1641
more or less, and the threats made, more or less, were based upon Arbuckle's claim that if you declined to take their coffee when they offered full rates, that they would have a claim against you for triple damages under the Sherman Act? A. I don't think any threat was made by Arbuckle's; you will have to ask Arbuckle Brothers themselves.

Q. We will do that in good time? A. I don't recall of any threat being made.

Q. There were questions of seriousness that led you to refer these questions to Mr. Putnam? A. I think Arbuckle 1642
had made some complaint to Washington.

Q. Had made some threats? A. I don't recall any threats.

Q. You meant that they had made threats to Washington; to some department in Washington? A. I don't think there was any threat anywhere.

Q. Complaints to Washington? A. No, I understand their representative was down there making some complaints which eventually resulted in the District Attorney in New York making the present investigation.

1643

MR. MONTGOMERY: In 1910?

THE WITNESS: Starting then.

Q. And you are sure of that? A. I understand it to be a fact that several years prior to their actual——

Q. The burden of their complaint always was, wasn't it, that you declined to take their shipments when they offered full rates, unless they would confine their shipments to the conference lines? A. I have never seen their complaints.

1644

Q. And never knew that that was the burden of the complaint that they made to Washington? A. I have never seen the complaint; I don't know its burden.

Q. What were the facts that you put to Mr. Putnam upon which he based this opinion that Arbuckle could sue for triple damages? A. I am unable to answer that question.

Q. Now, Mr. Daniels, don't you know that you went to him and showed him the correspondence you had, and told him that Arbuckle was offering this coffee and insisted that you take it, and if you did not take it they proposed

1645 to take an action to test out the question? A. I do not recall.

Q. Well, what was the position that you had in mind, and that Mr. Putnam spoke of when he said they could bring an action for triple damages if the conference forced them, meaning Arbuckle, to such a position? A. I do not recall.

Q. Well, now, had you looked up the Brazil law at that time to know whether or not that would raise some questions? A. I am not interested in the Brazilian law.

1646 Q. Why did you make the suggestion that the Brazilian law would also come into it as a feature? A. I think it was a common sense suggestion, but nothing more than that.

Q. Did you get a written opinion from Mr. Putnam? A. I don't recall.

Q. You don't recall; had you not received that opinion in some form when you sent this cablegram of May 5; when you sent the cablegram in which you state that the position was dangerous? A. I don't recall, but I think it was nothing more than a conversation.

1647 Q. I show you a cablegram of the 13th of May, 1909, addressed to Cook, Nifmore, signed Daniels; did you send that? A. Presumably.

MR. BALDWIN: I offer that in evidence.
Marked Petitioner's Exhibit 91.

Q. Well, between May 7th, had you talked with Jamison? A. I should infer so, I don't recall.

Q. Did he say what they proposed to do unless you accepted their shipments? A. I presume he stated exactly

1648 what I cabled; I acted as a middleman in the matter pure and simple.

Q. Well, was not the reason that you went to Mr. Putnam to get his legal opinion on the matter due to the fact that Jamison himself had told you right here in New York that unless these lines took his shipments that he proposed to test the question legally both here and in Brazil? A. It looks that way.

Q. And that is the reason you sent this cablegram of May 13th, Exhibit 91? A. It looks that way.

Q. You eventually asked him, did you not, that he defer

action until you could confer with your principal? A. The 1649
inference is that; I don't recall.

Q. Now, Mr. Daniels, between May 7th or the date of that last cable, May 13th and May 18th, did you receive any cables from your principals about this Arbuckle matter? A. What year?

Q. 1909; we are going in sequence? A. I don't recall.

MR. BALDWIN: Have counsel looked for the cables between those dates?

MR. BURLINGHAM: Between May 13th and May 18th—we have looked and cannot find them. 1650

THE WITNESS: I might state that if they are anything personal—my own personal matters—is torn up once a year. I don't keep any records or files, and never have.

Q. Now, I show you a letter under date of the 14th of May, to Lamport & Holt, with respect to Arbuckle Brothers, and ask you if that is a copy of a letter you sent to them? A. I accept it as correct.

MR. BALDWIN: I offer that in evidence. 1651
Marked Petitioner's Exhibit 90.

Q. Now, Mr. Daniels, you had a talk with Mr. Jamison before you sent this letter of May 14th, hadn't you? A. I should infer so.

Q. What was it he said about discrimination? A. I don't recall, but I cannot imagine——

Q. I am not asking you what you imagine; if you cannot recall say so? A. I don't think there was any discrimination. 1652

Q. I am asking you what he said? A. I do not recall.

Q. Now, I show you a letter of May 18th, 1909, to Busk & Daniels, from Lamport & Holt, and ask you if you received that letter? A. I accept it.

Q. You received it? A. I presume so.

MR. BALDWIN: Now, I offer the date, title, the direction, the last paragraph on the second page, and the signature on the last page.
Marked Petitioner's Exhibit 154.

Q. Up to the time of receiving this letter, you had not

1653 been able to make any arrangements that were satisfactory with Arbuckle Brothers? A. We had not been able to do it, no.

Q. After you received this letter, did you take up the question any further with them? A. I don't recall, but I presume that ended it.

MR. BALDWIN: Now, I offer so much of a letter of May 25, 1909, from Busk & Daniels to Lamport & Holt as I have; that is a paragraph with reference to coffee.

1654 Marked Petitioner's Exhibit 92.

Q. What have Arbuckle Brothers said to you about the step they proposed to take to force the conference steamers to take their cargo when tendered? A. I don't recall further than the documents you have shown me.

Q. You mean this Exhibit 92 that I hold in my hand? A. No, some of the previous exhibits.

Q. This letter tells us that "Arbuckle Brothers propose to take steps to force the conference steamers to take the
1655 cargo they send to them." What steps did they say they proposed to take? A. Not to my recollection.

Q. What did you use the words "We have, however, pointed out to Mr. Jamison that to bring the government in, in that manner would be a bit dangerous work, especially as his position at present is entirely a selfish one, and his record in the past would materially prejudice his position." What was it he had said to you about the steps? A. I don't recall.

Q. Why was it that you used the very terms that I have read, "pointed out to him that to bring the government in,
1656 in that manner would be a bit dangerous work"? A. I think it would show him up more unfortunately than us.

Q. You thought that both would be shown up? A. We would be rather glad to have it overhauled.

Q. You did not think he would? A. No.

Q. Now, after having read that, didn't he suggest to you that he was going to bring the government in? A. I don't recall.

Q. The idea of bringing the government in was not some spontaneous idea of yours? A. No, we knew Mr. Jamison's firm, not he himself, but some of his representatives had been to the Department of Justice in Washington, and

caused one of the senators to start the investigation that 1657
the Federal Government later did start; it was started at Arbuckle's instigation.

Q. And the fact that these conference lines were operating in restraint of trade, and violating the law of the land? A. I presume so.

Q. You know that was the burden of their complaint? A. I don't know anything except what I actually know.

Q. Just tell us what you actually know? A. I know nothing about the details of it.

Q. Now, up to that time, you had not finally arranged 1658
then with Arbuckle Brothers to take their coffee? A. I don't know what time you refer, but presume that, we never have.

Q. I show you a letter of April 4th, 1911, addressed by Busk & Daniels to Lamport & Holt, and ask you whether you ever saw that? (Handing witness paper.) A. We accept that as correct.

Q. That is doubtful; if you will just simply say that is a copy of a letter, that is enough? A. We accept it.

MR. BALDWIN: I offer it in evidence.
Marked Petitioner's Exhibit 95. 1659

Q. Mr. Daniels do you know the signature of Mr. Arthur Cook? A. Yes, sir.

Q. I think you have already testified that he was one of the nine directors of the Lamport & Holt Line? A. Yes, sir.

Q. And was a member of the firm of Lamport & Holt? A. Yes, sir.

Q. Look at that paper and tell me whether or not that is Mr. Cook's signature (handing witness paper)? A. 1660
Yes, sir.

MR. BALDWIN: I offer this paper for identification.
Marked Petitioner's Exhibit 186 for identification.

Hearing adjourned to Thursday, February 27th, 1913, at 2:00 o'clock p. m.

1661 New York, February 27th, 1913.

Hearing resumed pursuant to adjournment.

Appearances:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham and Charles Burlingham, for Frederick T. Busk, et al.

1662

LORENZO DANIELS, recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

MR. BALDWIN: Mr. Daniels, referring to the testimony at the last hearing with reference to the negotiations between you and Arbuckle Brothers, do you remember having a conversation with Mr. Humphrey, Mr. G. . Jamison, of Arbuckle Brothers, some time in May and October, 1911, about their co[illegible] A. I do.

1663

Q. And at the office of Mr. Jamison? A. Yes, sir.

Q. At that conversation wasn't the question of the proposed terms referred to a number of times in the course of the conversations? A. My only recollection of any terms was simply——

Q. Just answer my question "Yes" or "No." Was it referred to a number of times—"Yes" or "No"? A. I cannot recall it.

Q. Wasn't the substance of the conversation substan-
1664 tially this—didn't Mr. Humphrey or Mr. Jamison say to you that what they wanted was to have the privilege of chartering vessels themselves when it became necessary, but that you should have the bulk of their business provided you would give them what they called strictly charter rates inasmuch as they were very large shippers? Wasn't that part of the conversation? A. I do not think you have it correctly—not according as I remember it.

Q. Didn't one or the other of these gentlemen say to you that they did not expect the charter rates except on large shipments—what they call "full cargoes?" A. I am not able to answer your question as you put it. I do not re-

member it in these details. I can give you my idea as I 1665
do recollect it, with pleasure.

Q. Pardon me, but, pleasure or no pleasure, I want an answer. Wasn't it discussed—and freely discussed—that the conference lines would not make a rate to them on a price suggested per bag by them unless they confined all of their shipments to the conference lines, and did not reserve the right to charter vessels themselves when they thought their interests demanded it—yes or no? A. I do not recollect it in that form. You have the exact record.

I will ask to have that striken out. It is not re- 1666
sponsive. What is in my records I will take care of myself, and so far as my duties are concerned, I want to have responsive answers to my examination—to my questions.

MR. BURLINGHAM: He has answered your questions. He says that he did not recollect.

MR. BALDWIN: Then he interjected something else.

THE EXAMINER: If you will confine yourself to an answer to the question without endeavoring to go into an explanation of your answer, your solicitors 1667
will bring out in their cross-examination what you wish to say.

THE WITNESS: The questions are put not as they really occurred but in a form that implies something that did not exist. I am not able to answer them intelligently unless I am able to state the actual facts, which I am under oath to tell.

THE EXAMINER: If there is anything in the question which you do not understand, say you do not understand the question and Mr. Baldwin will prob- 1668
ably put it in another form, but it will shorten matters very much if you will confine your answers to the direct answer to the question.

THE WITNESS: Where it is possible to answer direct I will be glad to do so.

MR. BALDWIN: Very well, then we will not have any further trouble. During the course of the conversation, did either one of these gentlemen say to you that you would not take their coffee on any terms on your vessels that were put on the berths,

1669 and at rates that were advertised? A. I do not remember such a part of the conversation.

Q. Do you remember Mr. Humphrey having before him a written statement from their representatives in Rio, stating that they had offered their coffee for shipment to the various conference lines, and that the receipt of the tender was acknowledged, but that the lines would not take it?

1670 MR. BURLINGHAM: I object to any question as to the contents of a written document.

MR. BALDWIN: Answer the question.

THE WITNESS: I do not recall that any such documents were shown to me.

Q. None shown to you? None referred to by Humphrey and passed over?

1671 MR. BURLINGHAM: Objected to.

THE WITNESS: I think not.

MR. BALDWIN: Were any pointed out by Mr. Humphrey?

MR. BURLINGHAM: Same objection.

THE WITNESS: I do not think so.

MR. BALDWIN: Do you mean to say by that, that you do not recall? A. I either do not recollect or else my memory is that no such thing did occur.

Q. At the time you had the conversation with Mr. Humphrey and Mr. Jamison, you knew of the existence of the traffic agreement—Exhibit One in the Petition? A.
1672 That is the one I had not seen probably—up to that time. Number One is the one I do not remember having seen.

Q. You knew in a general way that that agreement or some agreement of that kind had been entered into by the conference lines that in 1907 were in competition? A. I have testified that we have had abstracts of that.

Q. You were also aware at the time you had this conference with him that arrangements had been made in reference to paying rebates to the shippers in Brazil to the American ports? A. My previous testimony recognized the copy of this——

Q. No. No. No? A. —— which ante-dated, I think,

this period you speak of, consequently I must have known. 1673

Q. In a sense then you were familiar with the rebate situation in the Brazilian ports for coffee or merchandise to be shipped to the American ports? A. In a general way but not in a complete way.

Q. Did you take any steps yourself to secure contracts with shippers here in New York for their shipments from the coffee ports of Brazil to New York? A. Only as in this instance acting as a middleman between the home office and the representatives of the coffee people.

Q. It is not at all material whether you acted as a mid- 1674
dleman or not. I asked you whether you did. You can answer that—in some instances? A. These conferences with Arbuckle Brothers were with the idea that they would give their shipments in Brazil to the line.

Q. And others? A. Not to my knowledge—unless you refer to some time previous to that one with McLaughlin's man from Chicago. He called and asked for details.

Q. There were times when you actually made contracts with American shippers who have coffee from Brazil—you made contracts and fixed rates and terms with these ship- 1675
pers from the coffee ports of Brazil to New York? A. No, sir. Not to my recollection.

Q. In any instance? A. No.

Q. Did you negotiate with them? A. The only two instances I have in mind are with Arbuckle Brothers—the conference with them——

Q. And McLaughlin and Company? A. And a conversation with one of McLaughlin's men.

THE EXAMINER: Those are the only two instances?

A. Those are the only two I have in mind.

MR. BALDWIN: You refer to W. F. McLaughlin 1676
and Company? A. I think that was the firm's name.

Q. Where was their place of business? A. Home office Chicago, I think.

Q. Coffee importers? A. Yes.

Q. Large importers? A. Yes.

Q. Prior to that time had they been confining their shipments to the conference lines? A. I do not recall.

Q. As a matter of fact they were patronizing your competitors? A. I do not recall.

Q. You were not getting any of their business? A. My

1677 impression is that they were shipping on the conference lines but I have no record. It is only a general impression.

Q. I show you a letter of August 4th, 1908, addressed Lamport & Holt, Liverpool, and signed "Busk and Jevons," and ask you whether that is a letter you sent? A. Apparently it is.

Q. I offer this Exhibit 58 for identification in evidence.

Marked Petitioner's Exhibit 58.

1678 Q. You say here, with reference to W. F. McLaughlin and Company, that "you had intimated that if they would commence their shipments on 1st August, we" (meaning the conference lines) "could probably arrange for their rebates to commence at the same time." Now, what rebates did you refer to there? A. As I recollect the instance, we had the copies of the two circulars which my previous testimony will show were received previous to that time.

Q. You mean "Notice to Shippers"? A. The printed
1679 ones that were sent us, and when Mr. McLaughlin's representative, who, if I am not mistaken was en route to Brazil at the time, called on us, we showed them to him, and he made certain suggestions probably in line with what is in the letter you have, and we said we thought they could be satisfactorily arranged. My recollection is that he said that the matter would be satisfactory to them, but all other details of the contract or whatever arrangement that was made subsequently were made in Brazil or abroad. We never went any further than what you see
1680 in that letter.

Q. If you never went further, and the arrangements were made abroad, how do you account for this statement —"We are pleased to confirm our cable advising that we have closed with these friends for their shipments of coffee by the conference steamers"? A. I regarded the arrangement as satisfactory. That was sufficient to warrant the cable.

Q. You use the words here that you "had closed" with them,—that you had entered into a contractual arrangement? A. No. I considered it was satisfactory. That was sufficient for us.

Q. You said "We have closed"? A. I put the same 1681
word——

Q. Are you prepared to say now that you had not actually closed with them? A. Did nothing more than the letter shows.

Q. That is not responsive. Are you now prepared to say that you did not close with McLaughlin and Company concerning their shipments of coffee by the conference line? A. We did not close formally. We considered the gentleman saying that his understanding was satisfactory that it was practically the same as closed—sufficient for us 1682
to say our arrangement was satisfactory.

Q. You offered them a rate? A. No rate.

Q. Well, then, in what sense was it closed? A. We showed him the documents—the copies of the printed circulars, and explained as far as we could what he wanted to know, and he said he thought it would be satisfactory.

Q. What did you show him—what rebates he was entitled to? A. Copies of the circulars printed for distribution in Brazil.

Q. Did you show him the rebate clauses in them? A. 1683
The entire printed circular.

Q. I show you Exhibit No. 123. Is that a copy of one of the circulars "Notice to Shippers" to be signed by the conference line and the shipper, that you showed to McLaughlin that you referred to a moment ago? A. I cannot recall but I think it was an earlier circular. I do not think this was received at the time.

Q. Where did they ship from—Santos or Rio? A. My recollection is that they shipped from both ports.

Q. I show you Exhibits Nos. 118 and 119. Are those the ones? A. These exhibits you show me have the date 1684
"1910" on them, so it could not have been them.

Q. The one I showed you before—Exhibit 123—is dated July 15th, '08. Isn't that the one you had or a copy of it? A. There were two earlier ones than "123."

Q. I show you Exhibit 180, which is the letter of Lamport & Holt to Busk & Jevons under date September 30th, 1908, enclosing what purports to be a copy of one of these "Notices to Shippers." Is that the one you had? A. If you will give me the date of these negotiations with McLaughlin it will help a good deal because the earlier enclosures are on the 18th July, Exhibit 102.

1685 Q. That is 4th August, 1908? A. 4th August, 1908. Apparently we would not have received the exhibit that you showed me there—Exhibit 180, because that is dated Liverpool September 30.

Q. Had you received before this from your principals or from any source a copy of one of these "Notices to Shippers"? A. Exhibit 102 under date "Liverpool July 18th" shows that they have sent us some extra copies of the printed circulars which we would have had in August of that same year, and that is my recollection.

1686 Q. Were they substantially the same as Exhibit 180? A. No, totally different.

Q. What? A. Totally different.

Q. In what respect? A. You have them before you. They speak for themselves.

Q. I have not got them? A. You must have them. They have been given to you.

Q. I only have things that are given in evidence? Here they are. Now then, this letter of yours dated 4th August, 1908, Exhibit 123, which is practically an exact copy of

1687 the contract or "Notice to Shippers" attached to Exhibit 180 is likewise dated July 15th, 1908. Were not the ones you received in the first instance in connection with that letter of July 18th, 1908, substantially in the same terms as Exhibit 123 as referred to—"Supplementary Notice to Shippers from Santos"? A. I cannot answer you that without comparison. You have the ones there that we received in this letter you have referred to. You have those copies and those are the ones we had in our possession at the time.

Q. I now show you Exhibit No. 11, "Notice to Shippers

1688 from Santos," dated 15th July, 1908. Is that one of them that you had received—or a copy of one you had received? A. I presume it is.

Q. I show you Exhibit No. 12, dated 15th July, 1908, and ask you if that is a copy of one? A. I presume it is.

Q. I show you Exhibit No. 13, dated the same date, with reference to Shippers from Bahia. Did you have them, or a copy thereof? A. I presume so.

Q. Did Mr. McLaughlin read these over in your presence? A. It was not Mr. McLaughlin.

Q. One of his representatives? A. I do not remember his name. I do not remember that he went into any de-

Q. Did you discuss with him the amount of rebate? A. 1689
I do not think any more was discussed than generally. He had a copy of the circular.

Q. Was anything said about the amount of the rebate? A. Not to my recollection. No details were discussed more than the general terms.

Q. Did you call his attention to the fact that it is provided that the rebates would be computed in respect of the shipment from each crop season ending 30th June and be payable six months later, but only to those shippers who have up to such date of payment confined their shipments 1690
of coffee from Brazilian ports to American ports exclusively to the said lines. Did you call his attention to that? A. I think he was familiar with the details of that notice.

Q. Do I understand that all that you did with the representative of McLaughlin and Company was simply to hand him "Notice to Shippers" of which you say Exhibits 11, 12 and 13 are copies, and nothing more than that was done? A. I think he had those copies. They had been sent them. If you will allow me the letter, I will be glad to amplify it.

Q. See if you cannot answer that question again. I 1691
think you have answered us that nothing more than that was done? A. If you will allow me to refresh my memory with the letter, I will. (After reading letter.) I think he raised some questions explanatory of the circular, and that he asked, as I have stated in this letter, the date on which they would apply on his shipments, and some other questions concerning the letter, to which we said that could all be amicably arranged between them abroad or in Europe.

Q. You mean to say you wrote your letter of August 4th, 1908, stating that you had closed with McLaughlin, and all 1692
that was done was the showing of these three Exhibits I have just mentioned and the only other thing suggested was the date on which these shipments should commence? A. That is my recollection but—

Q. Only that and nothing more, and on that you reported to your principals you had closed with them? A. My recollection is that he said it would be satisfactory and on the basis of that we reported in that way.

Q. Didn't you ask him whether or not that he would agree to the terms set forth in this Notice? A. No, sir.

Q. Did you ask him whether or not he would enter into

1693 any kind of a written agreement concerning his shipments? A. I do not think it is necessary.

Q. I did not ask that. I asked you whether you did. Answer "Yes" or "No"? A. I do not think so.

Q. And you think now that that was all that was said and that led you to write the letter Exhibit 88, using the words that you had closed with McLaughlin & Company. Is that right? A. That is my recollection.

Q. Weren't you in a sense responsible for the arrangement between the conference lines of allowing rebates to
1694 shippers from the Brazilian Ports to the American Ports? A. No, sir.

Q. You have already testified that during 1907, the period when these lines were not in conference that there were no rebates allowed outgoing or incoming? A. I think I have not testified that way.

Q. In 1907 during what you call the "rate-war"? A. I think my testimony, if I remember it, was only as applied to out-going business. I do not remember clearly whether any rebates were allowed early in the season or what
1695 period they were abandoned during that time.

Q. Were rebates allowed during 1907?

MR. BURLINGHAM: Which way do you mean?

MR. BALDWIN: Coming in?

WITNESS: I do not know without resort to records.

MR. BALDWIN: Were you at all responsible or did you suggest to your principals the necessity or desirability of making some arrangement for an arrangement respecting rebates during 1907? A. I do not know but it would be quite natural. I presume
1696 I did.

Q. I show you Exhibit 34 for identification—a letter of April 1907. Is that the letter you sent to your principals at Liverpool? A. I do not recall the letter but from my records I accept it.

I offer this in evidence.

(Marked Petitioner's Exhibit 34.)

Q. You state under the Heading of "Coffee" in this letter that "We have been given the matter some thought with the object of again securing to the lines the trade as

a whole including Messrs. Arbuckle and the few shippers 1697
that have broken away from us to support the boats of the Lloyd Brazileiro." That is on April 8th, 1907. At the time there was no conference, was there? A. What was the date?

Q. April 8th, 1907? A. I do not recall, but presumably that was during the period when there was a rate war on.

Q. Probably not, is that the answer? A. I should gather that.

Q. You made a suggestion of making an effort of securing the coffee business of Arbuckle Brothers and other 1698
shippers who had broken away to get their business for the three lines. Is that right? A. I do not recall, but the record will show—speak for itself.

Q. Do you know now what you referred to when you said that you were giving the matter thought of securing their business for the lines—the trade as a whole? A. I do not recall in detail. One of the suggestions probably made but not adopted—some bright thought that did not crystalize or materialize.

Q. This letter seems to be addressed to Lamport & Holt 1699
and also James Knott. Was your firm agent for both the Lamport & Holt and the Prince Line? A. Yes.

Q. At that period? A. Yes.

Q. Then the Lamport & Holt and the Prince Line in 1907 were not in competition? A. No, they were working in harmony.

Q. When you spoke in your testimony earlier of a rate war, it was not a rate war between the Lamport & Holt and the Prince Line, but a rate war in which Lamport & Holt and the Prince Line were on one side and the German 1700
Line on the other side. Is that right? A. The German Line and other lines on the other side.

Q. This letter was for the purpose of suggesting that you be allowed to arrange certain bonuses where the shippers would deal with the two lines you have mentioned, for which you were agent exclusively? A. I do not recall the purpose of the suggestion. It was only what I considered facilitated business at the time, but it was not adopted and it did not live beyond the suggestion. It has faded away —dead—past.

Q. Let it fade. As a matter of fact you suggested to

1701 your principals the advisability of adopting some form of bonus or rebate provided that shippers would confine their shipments to these two lines, and that is the purpose and intent of that letter? A. There is a suggestion.

Q. Yes. Have you got a statement of the tramp steamers advertised from Philadelphia that you were requested to produce here before? A. I have a memorandum.

Q. Have you produced that for any part of the period I have asked for? A. I have a memorandum of tramp steamers loaded for Brazil from New York and Philadel-
1702 phia, or at least a few of them. I do not know whether it is complete in 1912.

Q. What were they? A. "Bantu" February 25th.

Q. What is the tonnage? A. I have not got it. "Canadia" July 28th, "Corozal" July 28th, "Canadia" October 21st, "Canadia" 10th February, the "Dunkfield" and the "Rockwell," and several other boats loaded by the Standard Oil Company, whose names I have not got in the list.

Q. Those are all the boats you have been able to find?
1703 A. Yes.

Q. You have here "Canadia" and "Dunkeld." These two boats are now loading? A. Yes, sir.

Q. So that as a matter of fact there were only four boats in the year 1912, of which you have been able to find any record, that loaded at New York or Philadelphia for Brazilian ports? A. I think there were some boats loaded by the Standard Oil Company.

Q. With the exception of those loaded by the Standard Oil? A. That is all I can find of them.

Q. Have you made any enquiries for the years 1910,
1704 1909, 1908? A. I asked Mr. Goodwin to take them out, but he is still ill.

Q. You have done the best you could up to date? A. Yes.

Q. I have here on the paper of Busk and Daniels, Exhibit 181 for identification, what purports to be a statement from your books of payments of rebates made to Hard & Rand by Busk & Daniels, and under the date of 9th September, 1908, I find the sum of $7,263.46. Doesn't that amount embrace some rebates that had accrued prior to February, 1908, that date that the agreement, Exhibit One in this petition, was entered into? A. I have no data

Q. I show you what purports to be a copy of a cablegram dated 9th September, 1908, another cablegram dated 11th September, 1908, and a copy of a cablegram dated 7th January, 1910. Are those all cables which you received from your principals with reference to the payment of rebates to Hard & Rand? A. I think so. They are the copies we gave you from our records. 1705

Q. Look at that and see if they are also copies of a cablegram dated 23rd December, 1910, and of a cablegram, dated April, 1912? A. Yes.

Q. I offer these in evidence. 1706

Marked Petitioner's Exhibits 187, 188, 189, 190, 191 and 192.

Q. I offer in evidence an extract from the letter dated 8th January, 1910, Lamport & Holt to Busk & Jevons, with reference to coffee rebates.

Marked Petitioner's Exhibit 193.

Q. I offer in evidence copy of letter dated 22nd November, 1910, Lamport & Holt to Busk & Jevons. 1707

Marked Petitioner's Exhibit 194.

Q. I offer in evidence letter of 8th March, 1910, from Lamport & Holt to Busk & Jevons.

Marked Petitioner's Exhibit 195.

Q. I offer in evidence an extract, or rather, a statement made by Busk & Daniels of the dates and amounts of the rebates that they paid Hard & Rand from September, 1908, down to April, 1912, already marked 181 for identification. 1708

Marked Petitioner's Exhibit 181.

Q. On page 565 of the minutes, you stated in answer to a question of mine that you did not pay any attention to the rates of the Lloyd Brazileiro in making up or establishing the rates of the conference. Didn't you make it a practice continually to ascertain what the rates of the Lloyd Brazileiro were, report it to the conference, which in turn reported it to the London conference? A. We were advised of some of their rates and probably made a record of them.

1709 Q. Didn't you do it generally and was not that your practice? A. To a very limited extent only,—practically oil, I think.

Q. Practically oil, you say? A. That is my recollection.

Q. You made a practice of reporting directly to your principals concerning the business activities of the Lloyd Brazileiro and what their rates were? A. We reported anything we heard, as a matter of course. We were not very active in hunting it out though.

Q. I show you a letter of 24th January 1907 addressed
1710 to James Knott, Prince Line, Newcastle, and ask you if that is the letter you sent? A. I think it is—yes, I accept it.

Q. It is numbered 33 for identification. I offer so much of the letter in evidence as includes the address, date, and the heading "Lloyd Brazileiro" on page 2, down to and including the word "field" on the third page, and the signature.

Marked Petitioner's Exhibit 33.

1711 Q. Do you remember at that time whether your conference kept a list of what are known as "loyal" and "disloyal" shippers? A. I do not recall.

Q. You have no recollection on the subject of keeping a list of that kind? A. Not bearing on the date. Some time many years ago.

Q. 1907? A. I could not recall without something to refresh my memory.

Q. I show you the last paragraph of this Exhibit 33 and I offer it in evidence as a part of that Exhibit.

1712 MR. BURLINGHAM: Objected to on the ground that it does not relate to the Brazil trade or any of the matters in this case, as it refers to the River Plate.

MR. BALDWIN: I offer in evidence letter of 15th September, addressed to Lamport & Holt—the whole letter down to the words "River Plate" on page 7.

MR. BURLINGHAM: I object to any portion of the letter being put in evidence which relates to the River Plate trade.

MR. BALDWIN: I have not offered that. The Exhibit includes the signature and the initials.

(Marked Petitioner's Exhibit 63 and 64.)

Q. In September, 1908, you were working on statistics 1713
for the Lloyd Brazileiro—requested by your principals. What were those statistics? A. We were to figure out how the boats would probably come out—on any boat whether they were making money or losing it.

Q. What possible difference could it make to you if your testimony on page 565 is correct, that you did not consider the Lloyd Brazileiro in fixing rates at the London conference? A. I think you have the dates a bit wrong. A good many years ago we followed them closely, but lately we have not bothered with them practically at all. 1714

Q. You did in 1908? A. Apparently more closely in those years than we do now.

Q. You say you were making up statistics of whether they were making any money or not. Did you go to the Lloyd Brazileiro for statistics? A. I could not answer that question—whether we got them from the Lloyd Brazileiro or how we got them. We got them as well as we could.

Q. Did you look into their Expense Account? A. If we had the opportunity we would. 1715

Q. Did you, or did you not? A. I do not recall.

Q. Your duty was to estimate their probable cost of doing business? A. Yes.

Q. Was that for the purpose of ascertaining whether or not you should fix rates to meet them? A. No, I think just as to whether they were making or losing money, as I stated before.

Q. You were interested then in a sort of over-seeing capacity to know whether your competitors were able to do business at a profit? A. I should say yes.

Q. Did you make up that report for your principals? A. 1716
We did, yes.

Q. Where is it? A. Haven't any copies of it.

Q. Didn't keep it? A. No.

Q. Was it submitted to them in written form? A. I think there was an estimate given on each page.

Q. Never kept a copy of it for yourself? A. No.

Q. I show you a letter of September 25th, 1908, to Lamport & Holt, by Busk & Jevons, and ask you if it is a letter you sent? A. I accept it.

Q. You mean by that that you sent it? A. Yes.

1717 Q. I offer the address and date, and page 3 beginning with the word "Daghestan" and down to and including the word "two" on the following page.

(Marked Petitioner's Exhibit No. 66.)

Q. I notice in this letter that you say that the Lloyd Brazileiro have recently chartered a boat called the *Corn Exchange* for their October sailing on the basis of 2/7 1/2. What does that mean 2/7 1/2? A. 2 shillings and seven pence half penny a ton.

1718 Q. Dead weight? A. Dead weight, yes, bottom of the market.

Q. "Which is a very low charter and on which there may be a possible margin of profit if the earnings show up fairly well. Would it not be unfortunate to have the Lloyd Brazileiro show a profit just at this time on a voyage or two?" In what sense would it be unfortunate if they showed a profit on their business? A. I cannot recall what prompted that paragraph of the letter except on general principles.

1719 Q. General principles. You mean if they should make a profit that way there was no reason why the conference should not make a reduction? A. I do not recall.

Q. In what other sense would it be unfortunate? A. It is always unfortunate to have a competitor make money in your business.

Q. That is why you did not want any competitors?

MR. BURLINGHAM: Objected to.

Q. That is it, isn't it? You said it is unfortunate. You
1720 did not want any competitors in business?

MR. BURLINGHAM: Same objection.

WITNESS: I think it is desirable to have competition at times.

Q. At that time did you consider it advisable to have the Lloyd Brazileiro show a profit? A. I cannot answer that. It is too far back.

Q. The reason was because your own rates would then be found to be unreasonable?

MR. BURLINGHAM: Objected to.

WITNESS: They could not be shown unreasonable when it was the very bottom of the market—of an unfortunate market for charters. 1721

Q. If the Lloyd Brazileiro could at that time make a profit in what sense would it be unfortunate to the conference lines unless they had a different rate? A. Because the steamer contracted for at 2/7½ meant a very serious loss to the man who owned the steamer.

Q. Do you know that to be a fact? A. Yes.

Q. Who is the owner of the steamer? A. That is a matter of record in Lloyd's Register. I do not know. 1722

Q. Who told you? A. I know what it cost.

Q. Do you know whether it was under a time charter? A. Time charter.

Q. Do you know the basis? A. It gives it. 2/7½ per ton.

Q. Do you know how much it cost the owners to run that boat? A. General knowledge.

Q. Have you any knowledge whatsoever of what it cost to run that boat? A. I could not run our boats on that. 1723

Q. Why did you make that statement—"It would be very unfortunate if they should show up their earnings fairly well"? A. If they have got a boat that shows a loss to operate, our boats would have to compete on a losing basis.

Q. You say there would be a margin of profit? A. Somebody had to lose.

Q. How could there be? A. One is the owner of the boat and the other is a speculator in charters.

Q. You were talking about the charterer in this letter instead of the owner? A. The question of whether the charterer made a profit or not, yes. 1724

Q. You are talking about the charterer's possible profits and not the owner's possible profits? A. Yes.

Q. What concern was it of yours if the owner saw fit to charter his vessel at that figure to the charterer? A. Only a concern that the market was so extremely low that we naturally must suffer the same as everybody else.

Q. You had recognized the possible opportunity of the charterer to make some money at the rate? A. If he could get their boats at a cheaper rate he ought to make some money.

1725 Q. 2/7½? A. That is the lowest rate, I think, at which a vessel has been chartered.

Q. Very low? A. Yes.

Q. And a possible margin of profit? A. Quite correct.

Q. What was in your mind at that time that at that low rate they could make a profit? A. It speaks for itself.

Q. And that is the reason why you thought it might be very unfortunate if it should eventuate that way. Is that right? A. Yes.

Q. And very unfortunate to your principals. That is
1726 what you mean? A. I consider that a natural deduction.

Q. I assume from this statement of yours that 2/7½, the basis of the rate on the boat called the *Corn Exchange* was a rate less than the conference line rates per ton dead weight?

MR. BURLINGHAM: That is no question. You are just making an assumption.

Q. I will alter it. How did the rate of 2/7½ per ton compare with the rate under like circumstances quoted by
1727 the conference? A. If the conference chartered boats they could provide chartered boats at the same rate at the same time, but the conference boats are owned by the lines that operate them.

Q. And therefore they could not quote such rates per ton? A. It is not a quoted rate per ton. Why do you ask me a question which it is impossible to answer?

Q. I am trying to get you to explain. What was there about the rate of 2/7½ which you have just explained applies per ton dead weight that you considered so very
1728 low? A. The rate applies per ton dead weight to the charter rate per month for each steamer. The charterer pays all other expenses of operating, and pays for a three months voyage.

Q. The charterer? A. Yes. He makes his rates on the cargoes based on the cost of the boat and cost of operation, and that is not 2/7½. It is nearer 20/—.

Q. If the question of what the charterer might get per ton was the main question then why was it that you were at all alarmed at the rate of 2/7½—that the charter rate might yield a profit? A. Because it was so cheap. The boat was so cheap.

Q. What would be the unfortunate situation if that

should be shown? To whom would it be unfortunate? A. 1729
I do not know.

Q. What did you refer to—"Would it not be unfortunate to have the Lloyd Brazileiro show a profit just at this time on a voyage or two"? A. I do not recall.

Q. You did not mean it would be unfortunate to the shipping public, did you? A. Again, I do not recall.

Q. Do you remember whether or not at the time that this letter was written—Exhibit 66—whether the Lloyd Brazileiro rates were below yours? A. I think they have always been below. 1730

Q. I show you a letter of 16th February, 1909, to Lamport & Holt—I presume from your firm, although the copy which I hold does not contain the signature. Did you sign that letter? A. I accept it as correct.

Q. I offer the address, date and so much of the contents as begins with the words "Lloyd Brazileiro" on page 3, and ending with the word "fill."

(Marked Petitioner's Exhibit 82.)

Q. In 1909, you were keeping more or less close tab on 1731
the business of the Lloyd Brazileiro? A. More or less, I presume.

Q. You said here referring to the Lloyd Brazileiro that "there is nothing especially new in connection with this service, except that they are taking oil at the 14 cent rate and are standing in our way of getting higher rates, unless of course they fill." At that time the Lloyd Brazileiro were getting enough business to stand materially in your way? A. Yes, for a long time they carried the largest part of the business. 1732

Q. At that time were your rates as low as theirs? A. I do not recall in detail, but I presume not.

Q. I show you a letter Exhibit 153 for identification from Lamport & Holt to Busk & Daniels, under date April 8th, 1909? A. I accept it.

Q. I offer in evidence so much of that letter of 8th April, 1909, as is included down to the end of the second paragraph on the second page, ending with, and including, the word "line," and the signature.

(Marked Petitioner's Exhibit 153.)

1733 Q. Some time in and about the year 1909, didn't you cease to report individually to your principals about the business of the Lloyd Brazileiro, but reported through the New York conference? A. I do not recall but your records will show.

Q. I offer in evidence page 148, paragraph 331 of the New York conference, March 9th and 10th, '09. "Lloyd Brazileiro nothing new. *Ras Issa* is loading and booking general cargo at cut rates. No steamer is advertised to follow. We do not hear of the company securing [illegible]y
1734 extent future enquiries."

March 17th, 1909. Page 152 of the same minutes under date March 17, '09, minute 341 reads as follows: "Lloyd Brazileiro steamer *Ras Issa* sailed yesterday full with 63,000 cases oil, lumber, resin, and about 500 tons general cargo. This Company now advertise for Central Brazil, *Polarstjermen*, March 31st. For Central Brazil *Sergipe*, April 14th, and *Acre*, May 5th."

March 24, 1909, page 154, paragraph 348. "Lloyd Brazilerio advertises S. S. *Cara* for Mid Brazil ports to sail
1735 20th April. The *Polartsjermen* is reported having booked 43,000 tons but so far not started to load and has no cargo alongside. *Cara* is reported to have booked 10,000 cases.

Page 157. March 31st, '09. Paragraph 356. Lloyd Brazileiro no change in its attitude. *Polartsjermen* has 49,500 cases of kerosene. Steamship *Cara* 10,000 cases."

In Minute Book for the period from May 5th, '09, to May 25, 1910, on page 11, paragraph 427, the following paragraph appears: "Lloyd Brazileiro. The steamship *Eskside* sailed May 16th. Is reported to have taken 50,000
1736 cases oil. The Lloyd now advertises Steamer *Canadia* (which steamer is due to-day) to sail May 31st for Pernambuco, Bahia, Rio de Janeiro and Santos. The Lloyd Brazileiro have recently made engagements of resin at 50 cents per 280 pounds and cotton-seed oil at 9 cents per foot. The conference lines are still holding for 55 cents on resin and ten cents on cotton-seed oil. *Tocantins* now discharging but has the U. S. Marshall on board."

Page 15, same Minute Book, paragraph 439 reads: "Referring to Minute 427, the conference lines have now met the Lloyd rate of 50 cents on resin," and in the book entitled "Refusals, Brazil Service," dated November 11th,

'09, to June 29th, 1911, of the New York conference, I offer paragraphs dated August 24th, 1910, reading as follows: "It is agreed to advance flour and resin rates shipment commencing November 1st, five cents per barrel and per 280 pounds and white pine lumber to ten dollars per 1,000 super. feet, but the right is reserved by each line to give notice to the other lines to restore rates now current if it is found that the Lloyd Brazileiro do not meet the advance and that the existence of the conference is threatened thereby." The rates on other staples to take effect at once to be as follows: "Cotton seed twelve cents, turpentine 55 cents. Signed F. E. & Co. B. & D. P. F. G. & Co." 1737 1738

Q. It appears from the Minute Book that at different meetings beginning May, 1909, down to the 1st January of the next year—there being weekly meetings—that there was a report made to the conference concerning the business of the Lloyd Brazileiro. In other words a weekly report. Now you may take these books and see if I am right and I want to ask you this: Was it not the practice each week beginning in the early part of 1909, to report what business that the agents of the conference could learn about—the business of the Lloyd Brazileiro here? A. The records speak for themselves. It was the custom. 1739

Q. In other words the custom prior to 1909 was for each one of the conference agents to report to each one of their own principals and each one reported to the conference and the minutes entered at the conference showed the activities of the Lloyd Brazileiro. That in turn was sent to London? A. Yes—presumably.

Q. When you said a moment ago that it was only in the early days that you paid very much attention to the business of the Lloyd Brazileiro, did you mean you, individually? A. No. I spoke collectively then. That was in 1907-8—four or five years ago. 1740

Q. These records show that each week it was the practice of the conference to ascertain all they could concerning the business of the Lloyd Brazileiro? A. To a limited extent. You will find that your later records are very much less complete than those a few years ago—several years ago.

Q. I am speaking of 1909-10. You were very active through the conference in ascertaining the amount of busi-

1741 ness and what business the Lloyd Brazileiro was doing in New York? A. Yes.

Q. That continued till 1912? A. To a modified extent.

MR. BALDWIN: I offer this cable of July 9th, 1909, from the New York conference to the London conference, reading as follows: "Owing to Lloyd competition may we quote fourteen cents?"

Q. During the year 1912, which one of the conference lines carried the bulk of tonnage from these Brazil Ports?
1742 A. Without the data in front of me, I think that the Prince Line carried the largest amount of tonnage.

Q. You mean the amount of freight that was carried? A. I qualified that last answer. If you apply it to all the lines excepting the Lloyd Brazileiro.

Q. I mean the conference lines? A. I mean the Prince Line carried the greatest number of tons.

Q. You are speaking of the pounds of freight? A. Tons of 2,240 pounds and measurement.

Q. Not value? A. I would not be able to gauge the
1743 value. We do not know that.

Q. I have here a list of sailings of the Lamport & Holt Line for the years 1906-7-8-9-10-11-12. Marked 182 for identification. Will you look at the list of boats and say which ones were regular boats? A. What do you mean by regular?

Q. Those that sail regularly from here? A. They all sail regularly. I do not quite get the drift of your question yet.

Q. There were none of them specially chartered on that list were there? A. Yes, there are a number that were.
1744

Q. I offer this in evidence.

(Marked Petitioner's Exhibit 182.)

Q. Will you please state which of the boats on that list are boats that are owned by the line and those that were chartered? A. 1906. The *Phoenix* appears to be the only chartered boat. The balance of the boats are owned by the line. '07. All owned by the line. '08. All owned by the line. '09. All owned by the line. '10. *Pentwyn* and *Good Hope* not owned by the line. All the rest are. 1911. All owned by the line. 1912. All owned by the line.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. [redacted] 169

THE UNITED STATES, APPELLANT,

vs.

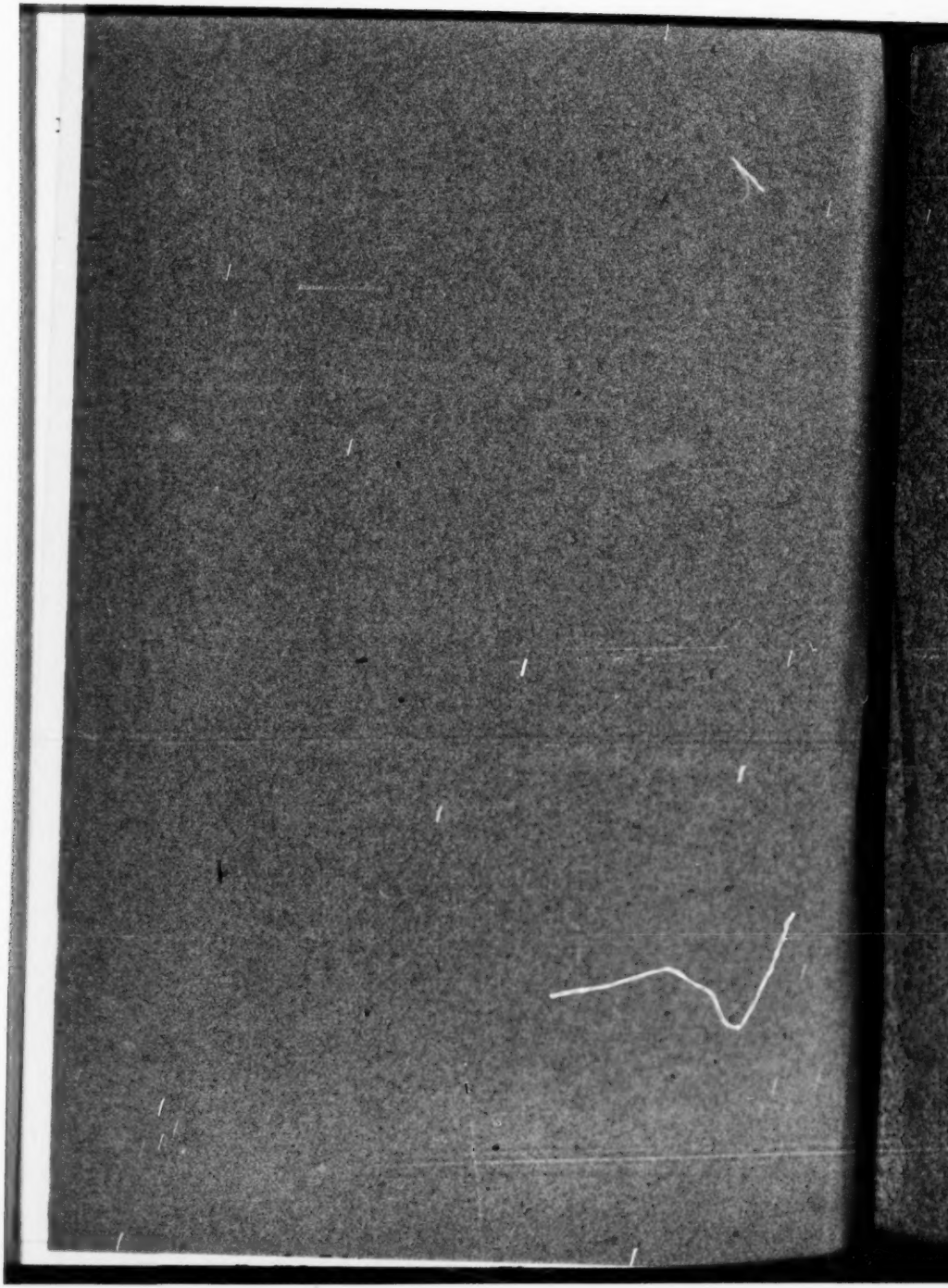
PRINCE LINE, LIMITED, PAUL F. GERHARD, CHARLES Z. GERHARD, FRANCIS J. ZIMMERMAN ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

RECORD: VOLUME 2.

TESTIMONY OF WITNESSES FOR THE PETITIONER.

FILED JUNE 16, 1915.



United States District Court,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Petitioner

against

PRINCE LINE, LIMITED, and OTHERS,

Defendants.

RECORD—VOLUME 2

Testimony of Witnesses for the Petitioner.

UNITED STATES OF AMERICA

v.

PRINCE LINE, LIMITED, ET AL.

Record—Volume II.

Testimony of Witnesses for the Petitioner.

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Q. Is there any other person whom you can delegate to 1745
the duty or task of ascertaining the number of sailings from New York or Philadelphia of tramp steamers in the years preceding 1912, which you have furnished, except Mr. Goodwin, who is ill.

MR. GERHARD: I have got the records for the years up to 1911, I think. I used to get the circulars and that would give all the steamers despatched to Brazil, and I shall be very glad to furnish you with them.

1746

Q. Referring again to the conversation between yourself and Mr. Humphrey and Jamison of Arbuckle Brothers some time in the early part of 1912, I show you this bunch of papers and ask you whether or not you did not see that lot of papers and your attention was not called to it by Mr. Humphrey or Mr. Jamison on that occasion? A. Not to my recollection.

(Marked Petitioner's Exhibit No. 196 for identification.)

Adjourned without date. 1747

New York, April 8th, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for the Prince Line, et al. 1748

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham, Esq., Charles Burlingham, Esq., for Frederick T. Busk, et al.

MESSRS. SPOONER & COTTON, by George S. Franklin, Esq., for Paul Gotthiel, et al.

THOMAS ANGELL, called on behalf of Petitioner being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Angell, what is your business? A. I am with Holt & Company; chief accountant with Holt & Company.

1749 Q. Who are Holt & Company? A. Exporters of flour.

Q. How long have they been exporters of flour? A. About 100 years.

Q. Where is their principal place of business? A. 95 Broad street.

Q. An American house? A. American house.

Q. What is your business with Holt & Company? A. Chief accountant.

Q. How long have you held that? A. Why, off and on for about fifteen years.

1750 Q. Are they exporters of flour to the South American ports? A. They are the manufacturers of the flour that is exported.

Q. And they have been engaged in that business for a number of years? A. Yes.

Q. During that period of time they have been shippers over what is known as these conference lines, which is the Prince Line, Hamburg-American Line and the Lamport & Holt Line? A. Yes.

Q. And also over the line known as the Lloyd Brazileiro? A. Yes.

1751 Q. Have you made up a statement, or tabulated a statement, from the books of Holt & Company of the shipments of flour by these respective lines I have just mentioned, during the years 1908 down to and including 1912? A. There is part of 1912.

Q. I show you what purports to be such tabulation; will you look at it and state if that is it or not? A. It is.

Q. Has it been correctly made up? A. Correctly made up from the records of the company.

1752 MR. BALDWIN: I offer this in evidence.

MR. KIRLIN: Do you mind telling us what the purpose is?

MR. BALDWIN: If you will look at it you will see for yourself; it shows difference in rates and the variations.

MR. KIRLIN: I must object to the document as immaterial, irrelevant and incompetent.

Marked Petitioner's Exhibit 197.

Q. Mr. Angell, these tabulations which have been now admitted in evidence as Exhibit 197, the first column is the year and the ports? A. Yes.

Q. And then under the head "Lloyds," you have the 1753
number of barrels, a column for the number of barrels, a column for the rates, day of the shipments and the total? A. Yes.

Q. And at the head of the column under the head "Lloyds" you have the average rate per barrel? A. Yes, for the year.

Q. Under the head of "Conference Lines," Funch, Edye & Company, you have the number of barrels, the rates shipped and they also relate to the ports which are mentioned in the first column? A. Yes. 1754

Q. And with reference to the other lines it is the same way? A. Yes.

Q. Carrying the totals, the number of barrels, and also of the average rates per year? A. Yes.

Q. When you use the word "Lloyds" you mean the Lloyd Brazileiro? A. Lloyd Brazileiro.

Q. I notice under the head of P. F. Gerhard & Company column of the year 1908, that there appears to be a rate of 30c. in February and 2200 barrels shipped? A. Yes.

Q. Do you remember just what occasioned that rate at 1755
that time? A. No, I do not, unless the Gerhards wanted the freight to fill the vessel, or something like that, and gave us that low rate at that time.

Q. But it has a material effect upon the average, that one shipment? A. It certainly does.

Q. The other rates for the other months that appear here are very much in excess? A. Yes.

Q. Now, do you remember when the alleged rate war between the conference lines terminated in 1908? A. No, I do not.

Q. The same situation seems to appear with reference 1756
to one shipment under the head of Funch, Edye & Company column? A. Yes.

Q. Where there appears 3300 barrels at 30 cents in April; do you recall the circumstances of that one particular shipment being so much less and everything else? A. I cannot give a definite answer to that. I presume the condition was the same as it was with the Gerhard parcel.

Q. Now, in 1910, it appears that there were just two shipments made by your firm by the Lamport & Holt—that is Busk & Daniels? A. Busk & Daniels.

Q. July, 150 barrels at 90, and November 1500 barrels

1757 at 80; now, that appears to be with one or two exceptions a very much greater rate than appears in the others; do you know what occasioned that particularly high rate at that time? A. Without speaking definitely I presume it is occasioned by our wanting to get the freight to Rio Janeiro, and having no other boat to engage we got Busk & Daniels to carry it at whatever rate they wanted. But it would not be an established rate at all, simply because we paid that rate at that time.

1758 CROSS-EXAMINATION by Mr. Kirlin:

Q. Mr. Angell, in some of the years you appear to have shipped larger aggregate quantities by the Lloyds than by the total of the conference lines? A. Yes, I believe the record does show that.

Q. Does that mean that you took the best rate, whichever side was offering it? A. Well, there might be a great many conditions enter into that; I couldn't say at this moment just what occasioned that condition. They might not have had steamers, one line or the other.

1759 Q. Did you always ship by the line that was offering the lowest rate? A. Well, I cannot answer that question.

Q. What was it that influenced the charges of the carrier? A. I presume there would be a great many things enter into it. We might not be able to get the one line to carry it, and might have to pay a larger rate by another line. When you see from the statement there shipments made during June, you have got here three or four vessels going down there and they got something in the latter part of the month, to save what space we could get

1760 at any rate we could get.

Q. In other words, your rate is determined, whether by the Lloyds or by the conference lines, by a variety of circumstances, is it? A. That I don't know. The rate is largely dependent upon the steamship companies, I presume. I mean the rate that we would pay would depend largely on the special conditions or circumstances, perhaps.

Q. Have you found the rates fluctuating during the same year paid on the Lloyds and on the conference lines? A. Well, from the statement; I can't say off hand. I think my statement would indicate that.

Q. What the circumstances are to cause those fluctuations you don't know? A. No. 1761

Q. Nor do you know why it is that your firm shipped on one line in one month rather than on another line in the same month? A. No.

Q. It may have been because the rate was more attractive, or because there was a choice ship? A. A choice steamer that is sailing.

MR. BALDWIN: I object to that as speculating.

Q. That is sailing, or a matter of ability to obtain room? 1762

MR. BALDWIN: Object to that as speculative and not evidence.

A. Yes.

Q. It is within your knowledge, isn't it, that the fluctuation in freight rates that are charged in this trade, both by the Lloyds and the conference lines, are affected by the volume of trade moving, or the demand for tonnage generally?

MR. BALDWIN: I object to that as incompetent and immaterial; also upon the ground that he has not shown his knowledge of the conditions to be qualified to answer it. 1763

A. I don't think I am competent to answer that question.

Q. How long have you been in the shipping business? A. I have been with Holt & Company about 15 years, off and on.

Q. Don't you know your freight rates advance when there is a general advance in the tonnage market in the world? A. No, I do not know. 1764

Q. You have never learned that, or heard of it? A. No; I thought that was largely due to the steamship companies themselves, advancing their rates.

Q. Undoubtedly the steamship companies have reason for advancing their rates, don't they?

MR. BALDWIN: I object; he cannot know that.

A. That is a very general question.

1765 Q. Do you assume from your experience that the steamship rates are advanced and lowered arbitrarily without any influence for the demand of tonnage in the general freight market?

MR. BALDWIN: I object on the ground that it is assumption and is not evidence.

MR. KIRLIN: Of course it is not, but I want to see what views he has on it.

MR. BALDWIN: It is immaterial and I object to it on that ground.

1766

Q. (Question read.)

MR. BALDWIN: I object on the further ground it is not pertinent to any question asked on direct. He has been produced here as an accountant who made up a statement and simply asked about two items.

MR. KIRLIN: You put the whole statement in here for the purpose of comparing rates and it is surely competent to ask him the question. Answer the question please.

1767 THE WITNESS: May I have the question read?

Q. (Question read.) A. I would say that I assume from my observation that such is the case.

Q. What are the observations upon which you make such assumption? A. The statement in front of you.

MR. BALDWIN: I object to that upon the ground that he has been produced here as an accountant, and Mr. Kirlin's question that he was in this shipping business is not pursuant to the facts.

1768

Q. Show me anything on the statement which indicates that the rates are advanced or lowered without regard to general conditons of the freight market? A. Shall I answer that, Mr. Counsellor?

MR. BALDWIN: Read the question again.

Q. (Question read.) A. The statement as a whole; I can only say that.

Q. That is unintelligible; what do you mean by it; what leads you to make that statement? A. The statement as a

whole, showing a gradual increase of rates from 1908 up 1769
to 1912.

Q. Do you know anything about the conditions of the freight market during that time? A. No.

Q. Then you have no basis at all for your assumption? A. Only as I have stated.

Q. Have all the rates that are on this statement increased gradually from 1908 up to 1912?

MR. BALDWIN: I object to that upon the ground that the document speaks for itself.

MR. KIRLIN: I am asking the witness as to his 1770
knowledge?

A. What is that question?

Q. (Question read.) A. The statement shows a gradual increase from 1908 to 1912.

Q. Does not the statement show rates of 50c. and 65c. in 1908 by the Prince Line as against 45c. and 40c. in 1909? A. Well, I don't know; you have the paper in front of you.

Q. Look at it and see? A. (After examining paper.) Do 1771
I have to specify particularly everything on this statement? I am speaking of the statement as a whole when I make that remark.

Q. I am calling your attention to the fact that the statement is not so? A. At the same time you may know there was a 30c. rate in 1908 as well.

Q. In one month, which you said yourself was due to some special circumstances? A. Possibly. I did not make it positive, not having knowledge.

Q. Do I understand you have no knowledge at all about 1772
the general freight market of the world apart from such as has come under your observation as an accountant in these particular trades? A. That is correct.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. You are not in the shipping business at all, are you, yourself? A. No.

Q. Never have been? A. No.

Q. You simply are an accountant for these manufacturers and shippers of flour? A. Exactly.

1773 By Mr. Kirlin:

Q. Those increases you have spoken of were on the Brazileiro as well as on the other lines according to the cable, are they not? A. The statement will show that.

Q. Isn't it so? A. I don't remember that.

Q. Didn't you notice that in making it up? A. I may have; I made that up several months ago.

Q. Just take a look at it and see whether that is not so? A. The statement would so indicate (after examination of statement).

1774

Cross-Examination by Mr. Burlingham:

Q. Don't you ship to other parts of the world besides South America? A. Yes. What bearing does that have? Do I have to answer that question?

Q. That is what you are here for. Have not rates increased since 1908 on all shipments to all parts of this world that you have had to do with?

Mr. Baldwin: I object as incompetent and immaterial and not pertinent to any question asked of this
1775 witness on direct.

A. In all parts of the world? I am not competent to answer that question.

Q. In some parts of the world other than South America?

Mr. Baldwin: I make the same objection and on the ground that it is absolutely immaterial and incompetent.

A. I must answer that question?

1776 Mr. Baldwin: If you know of your own knowledge.

A. I have noticed perhaps some rates advanced in other parts of the world.

Q. You ship to the West Indies much, do you?

Mr. Baldwin: I object to that and I will instruct the witness not to answer that, or I will ask the Commissioner to instruct the witness not to answer that, because the answer will be immaterial to any question embraced in the issues of this case, and further it is not pertinent to any question asked upon the direct.

THE COMMISSIONER: I will not instruct the witness 1777
in that way.

MR. BURLINGHAM: I think the Commissioner might instruct the witness——

MR. BALDWIN: Then I submit they must make this witness their own witness.

MR. BURLINGHAM: I suggest you tell the witness he is here to answer any questions notwithstanding the objections made by Mr. Baldwin, unless Mr. Baldwin directs him not to answer, because every time Mr. Baldwin makes an objection he turns and 1778
says, "Must I answer the question," and I think that is what he is here for.

THE COMMISSIONER: I do instruct the witness to answer the questions, waiting until such objections as are made by counsel have been entered.

Q. (Question read.) A. We ship to the West Indies, yes.

Q. Have the rates of freight on flour to the West Indies from this port increased largely since 1908? 1779

MR. BALDWIN: I object to that for the same reason, that he has not shown any knowledge of it.

THE COMMISSIONER: You may answer.

A. I have not noticed any.

Q. Does that mean that you didn't know anything about it? A. I have not noticed any rates.

Q. Are you familiar with the rates? A. No.

Q. How long have you been with Holt & Company? A. Fifteen years. 1780

Q. But you have confined your activities to accounting, have you? A. Exactly.

By Mr. Kirlin:

Q. In making up this statement—in making up that statement entirely, as far as rates go——

MR. BALDWIN: Mr. Commissioner, one at a time.

MR. KIRLIN: I apologize, Mr. Baldwin.

By Mr. Burlingham:

Q. Where did you get the material on which you base

1781 this statement? A. The records of the firm.

Q. You mean you looked up the accounts of sales and the contracts? A. From the records of the firm.

Q. Be a little more specific? A. I cannot.

Q. Did you do it yourself? A. I did.

Q. You mean you found the contracts for the sale of flour from here to Pernambuco, say, and looked up what the freight rate was at the time from the invoice? A. If I found the contract I did not have to look up the rate. The contract showed the rate.

1782 Q. That is the way you did it, was it? A. Not necessarily that way.

Q. I am asking you how you did it? A. From the records of the company.

Q. You said that several times, I want you to be more specific?

MR. BALDWIN: What do you mean by the records?

THE WITNESS: The shipping books, the contracts, the freight bills, all enter into the compiling of that statement.

1783

Q. And you profess to have no knowledge of the freight rates for the last five years from here to South American ports, except insofar as you found them in the records of the firm, is that it? A. Exactly.

By Mr. Kirlin:

Q. What part of the accounting do you do down there besides making up statements? A. The accounting of the concern in general.

1784 Q. Does that include keeping track of the freight rates; or making any entries about freight rates? A. Partly, yes.

Q. How many accountants are there there, and what is your relation to them? A. I am chief accountant.

Q. Did you enter these things up personally yourself, or do you just keep supervision over other accountants? A. What things are you speaking of?

Q. These things that have to do with freight rates, quantities shipped to different countries? A. I get in touch with them in a general way. I don't see just what your question would lead to. If you will be a little more explicit I might answer.

Q. I want you to say what you personally have to do with the accounts that deal with freights and rates charged on the different services; what have you to do with the accounts that deal with rates? A. Why, I check up the rates on some steamers at the time of paying the freight. 1785

Q. How is it if you do that that you have not noticed the freight rate in other countries except those embodied in this statement?

MR. MONTGOMERY: He did not testify to that, Mr. Kirlin.

1786

A. I said I had noticed the advances in rates. I think the stenographer will——

THE COMMISSIONER: The witness is correct; he said he recognized the advances in rates to some countries.

MR. MONTGOMERY: And not to others.

MR. KIRLIN: He told Mr. Baldwin——

Q. You told Mr. Baldwin you had not noticed any West Indian rates, didn't you? A. I did. 1787

Q. Where else does your firm make shipments? A. All over the world.

Q. Be a little more specific?

MR. BALDWIN: This is all subject to my objection that I have already made as being immaterial, irrelevant and incompetent, and not pertinent to any question asked upon direct.

Q. Where else do you make shipments? A. We make shipments to Brazil; we make shipments to the West Indies. 1788

Q. You told us that? A. We make shipments to Cuba and Porto Rico and Haiti, San Domingo, Africa.

Q. Haven't you noticed in the last two years the rates to all those countries are materially greater than in 1908? A. All of those countries I have not.

Q. What ones have you noticed that have been higher?

MR. BALDWIN: Subject to the same objection. All of this line of testimony I would like to have understood is subject to the same objection.

1789 A. What countries?

Q. Yes; what countries have you noticed the rates have increased in; what places, rather, where you have noticed an increase of rates? A. I have noticed an increase in rates in the British Islands; I noticed an increase of rates in Gibraltar; I cannot recall any other at the moment. I think there has been a reduction of rates to Porto Rico; I am not positive of that.

Q. How about Cuba? A. I can't say.

Q. You ship to Africa and to Australia? A. Not Aus-
1790 tralia.

Q. Africa? A. I cannot say as to the rates.

Q. You have no recollection about that? A. No.

Q. Your mind has not been on the subject of rates very much, evidently, until you were asked to make up this statement? A. All that came under my observation in the office.

Q. And a great many of the trades you did not make any observation at all about? A. No.

Q. Mr. Angell, you are a pretty busy man down there in
1791 the office? A. I certainly am.

Q. And your activities do not lead you to scrutinizing rates particularly? A. No.

Q. The affairs of this firm are very large? A. Yes.

Q. They are manufacturers, are they not? A. Yes, sir.

Q. As well as shippers? A. Exactly.

Q. So that what knowledge you would have of the rates in any event, unless you were specifically asked to get them up, as you were for this schedule, would be a sort of casual information, wouldn't it? A. Exactly.

1792 Q. Individually, you were speaking about in the various parts of the world rates increased, and you also noticed that in the Brazilian ports? A. Yes.

Q. And very materially? A. Exactly.

Q. Mr. Angell, have you any recollection now with reference to anything in the rates to other ports than South American ports, whether or not there was a uniformity in the increase of the lines engaged in that area; for instance, with the uniformity of rates of some of these lines like the North-German Lloyd, Prince Line and Lamport & Holt and any of those? A. Well, in connection with any other advance in rates I am not competent to speak as to the

companies; I had in mind when I answered the previous 1793
question to certain ports, and, of course, we had only one rate to those ports.

Q. You mean one rate by all the lines? A. The lines did not enter into it in answering the question; it was the rate to the port.

ADOLPH FRANK called on behalf of the Petitioner, being first sworn, testified as follows: 1794

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Frank, where do you reside? A. 2247 Hughes Avenue, Borough of Bronx.

Q. What is your business? A. Clerk.

Q. With whom are you connected? A. New Home Sewing Machine Company.

Q. Where do they have their principal place of business? A. 45 East 17th Street, City.

Q. City of New York? A. City of New York.

Q. How long have you been with them? A. About fifteen 1795
years.

Q. Your duties embrace that of keeping books, or working on the books of that corporation? A. No, sir.

Q. Had you occasion to make up a statement or a schedule of the number of machines shipped by the New Home Sewing Machine Company from 1907 down to and including August, 1912? A. Yes, sir.

Q. From what did you make up these statements? A. From the sales books of the concern and all documents in connection with the sales, or invoices. 1796

Q. The contracts for shipments and rates and all that? A. The freight contracts made with the steamship companies, biils of lading.

Q. Did you make up the statement correctly? A. I believe I did; I did to the best of my ability.

Q. You used your best information? A. I re-checked up afterwards.

Q. You may state whether or not this is the one you made up? A. From the appearance of it, it is.

Q. You can tell by looking at it, and if you don't know say so? A. Yes, it is.

1797 MR. BALDWIN: I offer it in evidence.
Marked Petitioner's Exhibit 198.

Q. In the first column you give the years and the months? A. Yes.

Q. The next the number of the machines shipped? A. Yes, sir.

Q. Under the head of "packages" you have cases and bundles? A. Yes.

Q. What do you mean by "cases"; are they parts of
1798 machines? A. No; the machines are usually packed in a complete case; that is, a complete machine in a case.

Q. What about these bundles under the head of "bundles"; what do you mean by that? A. That refers particularly to the hand machines; the hand machines are packed in smaller boxes and then four boxes strapped together, which we in the business class as a bundle.

Q. In the other column "cases of parts" and so forth; that means a shipment of parts of these machines? A. Yes.

Q. Parts of the machines manufactured by this company,
1799 is that right? A. Yes, sir.

Q. The next is the destination, giving the list of the ports to where they were shipped? A. The shipments sent to, yes, sir.

Q. The next column is the rate per cubic foot and the primage? A. Yes.

Q. I see here in ink at the last, or the foot of that column where you have the number of cubic feet, rate, and then you also have a charge here for lighterage? A. Yes.

Q. Now, that lighterage charge you understand is a
1800 charge in addition to the primage? A. Yes.

Q. And in the next column is the name of the steamers? A. Yes, sir.

Q. And the next is the name of the lines that own the respective steamers that appear in the column before that? A. Yes, sir.

No CROSS-EXAMINATION.

JOHN E. JOHNSON, JR., called on behalf of the Petitioner, 1801
being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Johnson, you are the John E. Johnson, Jr., member of the firm of Hard & Rand? A. Yes.

Q. You live at Rio de Janeiro, Brazil? A. Yes, sir.

Q. How long have you been there? A. Off and on for a great many years.

Q. How long have you been with Hard & Rand there? A. I went out there in 1896 the first time.

Q. Been with them ever since? A. Yes, sir. 1802

Q. As the managing partner at Rio? A. No; I was not a partner when I went out.

Q. How long have you been a partner? A. In the firm of Hard, Rand & Company, or Hard & Rand.

Q. Of Hard, Rand & Company? A. About thirteen or fourteen years.

Q. As managing partner you have charge of all of the branch houses of Hard & Rand in Brazil, haven't you? A. Yes, Hard, Rand & Company in Brazil.

Q. You call it Hard, Rand & Company in Brazil? A. 1803
Yes, sir.

Q. It is the same firm, though, as Hard & Rand, isn't it? A. It has not always been.

Q. How long has it been? A. For the last—about, five years.

Q. About five years? A. Yes.

Q. Do you remember the date?

MR. KIRLIN: It has been the same during the last five years?

THE WITNESS: There has been no change. 1804

Q. There has been no change in five years? A. About five years; four or five years.

Q. Previous to five years ago what was Hard, Rand & Company? A. That was a partnership between myself and Hard & Rand.

Q. So that previous to five years ago you had no interest in the business of Hard & Rand at other places than Brazil, is that it? A. No, that is not it.

Q. When did you go into partnership with Hard & Rand? A. When was the firm of Hard & Rand registered?

1805 Q. When did you become a partner of Hard & Rand? A. I say about five years ago.

Q. What I mean is this; at some time Hard & Rand organized the firm of Hard, Rand & Company? A. Yes.

Q. And made you a partner in it, is that right? A. The firm of Hard, Rand & Company was organized long before I was a partner.

Q. How was it composed when first organized? A. I don't recollect; it was in existence when I first knew of Hard & Rand.

1806 Q. And it was different from Hard & Rand? A. Yes.

Q. It had different partners from Hard & Rand? A. Sometimes it had and sometimes it did not.

Q. It was a partnership? A. Yes.

Q. Not a corporation ever? A. Never has been a corporation.

Q. And for five years it has been identical with Hard & Rand? A. Nearly five years, yes.

Q. For a period much longer than five years you have been a partner in the firm of Hard, Rand & Company? A. Yes.

1807 Q. Did that constitute you also a partner of Hard & Rand up here? A. No.

Q. Did it give you any interest in their New York business? A. The terms of that partnership did not enter.

Q. How long have you been in charge of the branch houses of Hard, Rand & Company at Rio? A. I was in charge from about 1897 to 1901, I should think.

Q. Until 1901? A. And I spent five or six years after that in London.

Q. And returned there in about 1907? A. Returned
1808 there in 1907.

Q. And since then you have been in charge of that house at Rio? A. Yes.

Q. And have also had charge of the branch of the company at Victoria and at Santos and Sao Paulo? A. Those houses were in charge of local managers.

Q. But under your direction, are they not? A. I am authority in there, yes.

Q. You have authority over them there? A. Yes; the managers run their own business; I am authority over them, but I do not interfere with them.

Q. You are in authority over them; I don't care how much you interfere with them? A. Yes. 1809

Q. You have charge of the shipments of coffee from Rio to the United States? A. Yes.

Q. And also to Europe? A. Yes.

Q. And you deal with the steamship lines and make arrangements with the steamship lines for the shipment of that coffee? A. Yes.

Q. How long has that been the case; ever since you have been manager there? A. Since I have been manager.

Q. Ever since 1897 then, anyway? A. No, I believe the arrangements were made in 1907. 1810

Q. Until when? A. I could not name the date; for a great many years the arrangements were made either in London or here; they were not made in Brazil. The last few years they have been made in Brazil.

Q. How many? A. I could not tell you. I should think four or five years, perhaps; along there.

Q. For four or five years they have been made in Brazil? A. Yes; four years perhaps would be nearer.

Q. But the arrangements for the shipment of coffee under the general conditions you engaged? A. I engaged freight from Rio. 1811

Q. And you are acquainted with the agents of the Prince Line at Rio? A. Yes.

Q. Who are they? A. At present Davison-Pullen Company.

Q. How long have they been the agents? A. They are the successors of Quaile, Davison & Company, who were agents as long as I remember.

Q. How long? A. Mr. Quaile, and I believe the firm was changed to Davison—— 1812

Q. Do you know all the partners in that firm? A. I don't know. Some partners in London I don't know.

Q. But you know those in Brazil? A. Yes.

Q. And you talk to them about freight matters? A. No, I do not talk to them about freight matters; they have a freight department and a different person is in charge of that.

Q. You talk with the clerks? A. The partners attend to the import business.

Q. Do you talk with the clerks about general questions

1813 of coffee? A. With the managers of their steamship department.

Q. Who are the agents of the Prince Line at Victoria? A. We are the agents; Hard, Rand & Company.

Q. Who are the agents of the Lamport & Holt Line at Victoria? A. Hard, Rand & Company.

Q. And Mr. Bryan Berry is in charge of the branch house of Hard, Rand & Company at Victoria? A. Yes.

Q. Now, Mr. Johnson, I show you this letter and ask you what it is? A. A letter which I wrote to New York on the
1814 date mentioned; at least, I dictated it.

MR. MONTGOMERY: I offer that in evidence.

Marked Petitioner's Exhibit 199.

Q. I call your attention, Mr. Johnson, to the paragraph headed "Syndicate Lines," in that letter, which reads as follows: "The question has come up as to whether the Syndicate Lines should take cargo at the berth rate from shippers by the Lloyd steamers"; what does that mean? A. It means what it says, that is all.

1815 Q. Exactly, but does it mean that the question has arisen in some way as to whether if a shipper should ship by the Lloyd steamer—that is the Lloyd Brazileiro steamers I take it? A. Yes.

Q. That means Lloyd Brazileiro steamers? A. Yes.

Q. The term "Lloyd" is commonly used to mean Lloyd Brazileiro, and that means that to everbody in this business? A. Yes.

Q. Does it mean that where the shipper had shipped by the Lloyd Brazileiro steamers to some extent the question
1816 had arisen as to whether the Syndicate Lines should refuse to take any cargo for him that he might subsequently offer, isn't that what it means? A. No, I don't think just as broad as that.

Q. How much narrower is it? A. I should say it meant simultaneously.

Q. You mean if a cargo was going on the Lloyd steamers they would not take it back and put it on the conference line? A. No, I mean to say more or less the same period.

Q. What do you mean by the same period, the same day? A. No, the same few months.

Q. How many months? A. I don't know that I had any definite number of months in mind when I wrote that

Q. But you mean that for some period of time the shipper shipping by the Lloyd ought to be refused by the conference lines shipments, is that right? That is what it says here. 1817

Q. Meaning, for instance——

MR. KIRLIN: The question of berth rate seems to be involved there.

Q. I will come to that in a minute. What you mean, for example, if Arbuckle should ship by the Lloyd Brazileiro on a certain day the conference lines ought, for sometime to come, to refuse Arbuckle's shipments, is that it? A. No, at the berth rate. 1818

Q. What do you mean by the berth rate? A. The berth rate is the established rate; advertised rate of freight, or the current rate of freight which everybody knows.

Q. And that is the rate without any rebate? A. The berth rate does not mean any rate less a rebate; the berth rate has nothing to do with rebates.

Q. It is a quoted rate, offered rate? A. It is the quoted rate, not necessarily offered. 1819

Q. And then the question did not involve then whether Arbuckle or some other shipper who should ship by the Lloyd Brazileiro should forfeit a rebate by the conference lines, but whether he should be allowed to ship even at the regular berth rate, is that it? A. Whether he should be allowed to ship at the berth rate.

Q. There is no question of rebate involved in this at all, is there? A. That does not enter it as far as I know.

Q. And your suggestion was that they should not—— A. The rebate might enter later on. 1820

Q. Your suggestion was then that the conference lines should what? Should charge a higher rate than the berth rate to ship in that situation? A. That was the idea.

Q. That they should charge a higher rate? A. Doubtless that was my idea; yes.

Q. How much higher? A. I think the difference we had in mind at the time was about fifteen cents, or something like that.

Q. Did you ever mention the amount of fifteen cents to anybody? A. I don't think so.

1821 Q. Did you ever talk about fifteen cents to anybody? A. No.

Q. Your letter continues: "The Prince Line have declined to take such cargo." How did you know that? A. I got it from what I considered good information.

Q. What was that information? A. To this effect——

Q. From whom? A. I could not name the person. It came either directly or indirectly from the agents of the line.

Q. Did they volunteer that information or—you were
1822 writing this letter to Hard & Rand of New York? A. Yes.

Q. And giving them the information as to the situation at Rio. Now, you advised them that the Prince Line have declined to take such cargo. Now, did that come up from your having gone to the Prince Line and made the suggestion to them as you are making it to your associates at New York? Who took the initiative in this matter? Did you go to the Prince Line and ask them to refuse cargo? A. The initiative as far as I can recollect came from seeing shipments by one or two firms in the manifest of steamers,
1823 by what we call outsiders——

Q. You saw these manifests? A. And I undoubtedly called the attention of the agents either directly or through their brokers to the fact that such shipments had been made.

Q. And also suggested to them that these shipments having been made the shippers ought not to be permitted to ship at the berth rate, is that right? A. I put it to them that if we are supporting a good service——

Q. Never mind your argument you adduced to them? A.
1824 I cannot answer the question—you are asking how and I have to answer or——

Q. Your arguments your counsel will bring out on cross-examination? A. You asked my opinion; I cannot give an opinion.

Q. (Question read.)

MR. BALDWIN: Yes or no.

Q. Is that what you demanded of them? That is what this says here.

Q. That is what you demanded of the Prince Line, is it? A. I did not demand it. I suggested either directly or

through the broker that it did not seem a fair arrange- 1825
ment.

Q. What do you mean by outsiders? A. I mean as a rule tramp steamers, or any steamers that are not signed at the bottom of that notice you have there. You have the lines all down there. Any steamers not named there would be called outsiders.

Q. And the term "outsider" you apply to steamers, and not to shippers? A. Not to shippers, no; steamers.

Q. There are not any shippers you describe as outsiders? A. Shippers are not covered by that name. 1826

Q. You went to the Prince Line then and approached them or their agents and made the suggestion that it was unfair for them to take this cargo at the berth rate from shippers who refused to patronize them exclusively; that is what your proposition was, was it? A. From shippers who had been shipping by these other boats.

Q. And you not only told them it was unfair but you suggested you wanted something done about it, didn't you? A. That was the natural inference there.

Q. And the Prince Line, you write, have declined to take 1827
such cargo; how did you get that information that the Prince Line had declined to take such cargo? A. I don't recollect the exact circumstances, but I must have received that information either from the shipping department of Davison & Company or the brokers; I couldn't say which.

Q. That is, from the agents of the Prince Line at Rio? A. Or the brokers.

Q. What do you mean by the broker? A. The ship broker.

Q. What ship broker? A. The broker through whom we 1828
engage cargo.

Q. The ship broker through whom you engage cargo? A. Yes.

Q. The ship broker whom you patronize? A. The ship broker engaged in engaging cargo for the Prince Line. We don't go direct.

Q. You go through a broker? A. Yes.

Q. And that information came back to you? A. Yes.

Q. And you relied on it? A. And evidently I relied on it or I wouldn't have written it.

Q. But you say there "The Lamport & Holt agents are

1829 inclined to accept the same." Where did you get that information from? A. I presume that came through the same sources.

Q. You had taken the matter up with Lamport & Holt and made the same suggestion of unfairness and the same request that something be done about it as you had to the Prince Line? A. I evidently did.

Q. And you received a different word from them; that was that they were going to take this cargo? A. As far as I recollect I received no definite word.

1830 Q. But they seemed inclined to accept the same; in other words, they did not agree not to take it, is that it? A. No, they certainly did not, because they decided to wire to Europe on the subject. A conference between the various—my information was that a syndicate telegram had been sent on the subject.

MR. BALDWIN: Sent to whom, Mr. Johnson?

THE WITNESS: I don't know. They have a general agent I think.

1831 Q. Where did you get the information from that a Syndicate telegram had been sent? A. I don't know whether I received that through Lamport & Holt agents or the broker or through the Prince Line; one or the other; I couldn't say which.

Q. Where did you get this information contained in your letter: "No answer has yet been received, but the Prince Line agents have a private wire from Knott this morning, telling them to follow the lead of Lamport & Holt." A. The same source I expect.

1832 Q. Your letter continues: "This looks as though cargo by outside shippers would be received. If so it seems to us unjust to supporters of the line and to call for protest. If Urban, Trinks, etc. can ship the bulk of their coffee at the cheap Lloyd rate and still take advantage of the syndicate steamers when convenient, especially for New Orleans, it gives them a distinct advantage over us, if ten percent. is the maximum rebate allowed." Who are Urban, Trinks and so forth? A. They were at the time exporters of coffee from Rio.

Q. Is that one firm or two? A. Two firms.

Q. Urban, who is Urban connected with? A. Eugene

Urban & Company. I think it was Eugene Uraban at the time. 1833

Q. Who is Trinks? A. Trinks is no longer in business.

Q. Who was he before? A. He was a German.

Q. Were they large shippers? A. No.

Q. Did they ship coffee to the United States? A. Yes.

Q. And to Europe? A. Yes.

Q. Were you ever advised by the firm of Hard & Rand at New York as to whether any action had been taken on this request of yours? A. I can find no——

MR. KIRLIN: We object to that as immaterial hearsay. 1834

A. (Continuing.) I can recollect receiving no reply nor can I find a trace of any. They let the matter rest there apparently.

Q. Now, Mr. Johnson, you say you did not receive any word from Hard & Rand at New York as to whether any action had been taken by the conference lines in this regard. How did you learn what disposition they made of this matter. 1835

MR. BURLINGHAM: If any.

Q. If any? A. I don't recollect hearing any further on the matter at all.

Q. You seemed to be quite interested in this question, wrote this letter, that is quite a strong letter; your interest did not cease after you dictated that letter, did it? A. No.

Q. What occurred; what more did you do about it, if anything; did you make any effort to see whether any action had been taken? A. I did make further—— 1836

Q. Talk with the conference agents or the brokers or anybody about it? A. I may have talked, but I don't recollect doing anything further in the matter.

Q. Don't you recollect any conversation you had? A. No.

Q. You do not recollect whether you satisfied yourself in any way that they had acceded to your request? A. I satisfied myself by looking at the manifests and seeing no further shipments made.

1837 Q. What manifests did you look at? A. The public manifests of shipments or steamers.

Q. Do all the steamers—— A. All the steamers publish in the manifest.

Q. And you examined the steamship manifests of the conference lines, to see whether these shipments of Urban and Trinks and so on were being refused, is that what you mean? A. No, I think I examined them to see further shipments by outsiders.

Q. You examined these manifests of outside steamers to
1838 see whether Urban and Trinks and so on, to see whether they were shipping by any outsiders? A. Yes.

Q. And you found, did you, that they were not? A. As far as I recollect, I found no further shipments.

Q. Do you occasionally go through those manifests now from time to time? A. When I am in Rio I see them all.

Q. What is your best information from examination of those manifests as to whether these shippers are shipping by independent lines, the outsiders, since writing this letter? A. As I tell you my recollection is that I saw no
1839 further shipments by them at that time; no.

Q. And have not up to date? A. Oh, I don't know as long as that; I couldn't say for all that time.

Q. You cannot remember any instance, can you, that you have run across in the manifest? A. I don't recollect any shipments by them, no.

Q. You would be quite apt to recollect if there had been any, wouldn't you? A. I would at that time.

Q. You would now, wouldn't you? You regarded it as an outrageous thing that they be permitted to use the independent lines or the conference lines at that time, didn't
1840 you? A. Outrageous is pretty strong.

Q. Well, this letter is pretty strong. Now, you regarded it as a pretty serious proposition calling for drastic action at that time, didn't you? A. I don't believe any drastic action was taken.

Q. And you found that information by going through the manifest, didn't you? A. Yes, sir.

Q. And you have gone through the manifests since and if you had found that in the manifests it would have been pretty apt to challenge your attention, wouldn't it? A. It quite likely would; but it is a very simple matter to look

through the manifest and see. I would not like to state 1841
positively one way or the other.

Q. You say you have charge of the agency at Victoria? A. Hard, Rand & Company, are the agents at Victoria.

Q. Of the Prince Line and Lamport & Holt Line? A. Yes.

Q. What is their policy in regard to requiring shippers to patronize them exclusively? A. They have no policy at all.

Q. You are sure about that, are you? A. Yes; Hard, Rand & Company have nothing to do with the policy; 1842
everything is referred to the agents in Rio.

Q. Do you know from your agents there what the instructions are in regard to refusing cargo of parties who patronize independent lines? A. They do not refuse any cargo. They refer all applications to Rio.

Q. But, do you know from your agents at Victoria whether under their instructions or otherwise cargo from Victoria is refused?

MR. KIRLIN: That is obviously hearsay.

MR. MONTGOMERY: Not necessarily. 1843

A. It has never come before my attention that it has been.

Q. How many tramp steamers have there been in that traffic, Mr. Johnson, in the time since this letter was written? A. What do you mean by a tramp steamer?

Q. You spoke of outsiders consisting of such lines as the Lloyd Brazileiro, which is not in the conference; that is the only independent line, isn't it? You speak of that and tramp steamers as constituting outsiders that you 1844
mentioned? A. A shipment to the United States you are speaking of now?

Q. Yes? A. Well, there are chartered boats.

Q. Do they go on the berth? A. I don't think any chartered boats have gone on the berth for a long time.

Q. This cannot have anything to do with charters, can it, this letter of yours? A. No, that would not refer to charters.

Q. It would not refer to any tramp boats at all, would it; that was a question of the Lloyd Brazileiro, wasn't it? A. That would refer to the Lloyd; but some of their boats are chartered. A chartered cargo is known as a tramp

1845 Q. You mean if chartered from the Lloyd Brazileiro or an owner? A. Yes.

Q. Then you call it a tramp? A. They are very often tramps.

Q. You call it a tramp when engaged in that way? A. We call it a Lloyd chartered boat.

Q. I mean this letter did not refer to any tramp; it referred to the Brazileiro, didn't it? A. It referred to the Lloyd chartered boats.

Q. Not to any boat trading as a tramp? A. I don't think
1846 there has been any on the berth at all recently.

Q. I call your attention, Mr. Johnson, to this paper entitled "Memorandum of Agreement" and ask you what that is? A. The printed form without the pencil notation underneath; the original printed form.

Q. The original printed form? A. It is underlined with notations that were done in our office. I was informed by our Rio house that that was presented to them by one of the steamship companies. I was abroad at the time.

Q. You were abroad at the time this came in? A. Yes.

MR. MONTGOMERY: I will ask to have this marked
1847 for identification.

Marked Petitioner's Exhibit 200 for identification.

Q. Mr. Johnson, you say this was received by your Rio house from the steamship lines, was it?

MR. BURLINGHAM: He has not said so.

A. I was informed when I got back to Rio.

Q. You were informed by your subordinates that this had been received in your absence?

1848

MR. BURLINGHAM: Objected to as hearsay.

MR. KIRLIN: And incompetent.

Q. Is that right? A. I asked for the present steamship terms and was handed that document as having been received while I was away.

MR. KIRLIN: Move to strike out the testimony as incompetent.

Q. This is a blank memorandum agreement I notice; was one in that form ever executed? A. Not by me.

Q. By Hard, Rand & Company? A. As far as I know they were not. 1849

Q. What action, if any, was taken upon this Exhibit 200 for identification?

MR. BURLINGHAM: Objected to as immaterial and irrelevant.

A. It was kept on record.

Q. For what purpose? A. For the purpose stated therein.

Q. Do you mean by that it was not ever executed, that it was acted on as containing the terms under which you were doing business with the steamship lines? A. It does not contain any of our terms here and says what they will do if we do certain things. 1850

Q. In other words, you relied on it as a notice to shippers? A. We relied on the signatures.

MR. KIRLIN: There are no signatures on it.

THE WITNESS: The printed signatures on the top of it.

1851

Q. You got this notice from a steamship line and it was called to your attention when you returned to your office?

MR. KIRLIN: He says he did not get it.

MR. BURLINGHAM: He says he wasn't there.

MR. KIRLIN: Somebody told him in his office about it.

Q. All of this time, Mr. Johnson, you have been getting rebates from the Royal Mail Steam Packet Company, the Hamburg Sudamerikanische Dampfschiffarhts-Gesellschaft, Hamburg-Amerika Linie, Norddeutscher Lloyd, Lamport & Holt and Prince Line, Limited, haven't you? 1852

MR. KIRLIN: You mean in Brazil?

Q. In Brazil?

MR. KIRLIN: I object as incompetent and not within the scope of the issues.

A. We received rebates; I don't know whether they were received in Brazil or not, for any shipments made by those lines.

1853 Q. Do you know whether they were received from any of these lines in Brazil?

MR. KIRLIN: This is all subject to our objection.

A. I shall have to look up the books and find out.

Q. Where? A. Find where the actual cash is paid.

Q. At any rate, you know you have been receiving rebates from these lines on all your shipments of coffee to Europe and the United States ever since 1908, haven't you? A. That is dated 1909?

1854 Q. I understand. I asked you the question of 1908; is that true? A. I would not swear we have received rebates on all shipments since then, no.

Q. You have on all of them since 1909, haven't you? A. All shipments by those lines from regular ports we have, yes.

Q. I wish you would read that agreement and tell me whether those rebates have been paid on the basis of that "Memorandum of Agreement," Exhibit 200 for identification? A. Such rebates as we received have been paid in

1855 accordance with the terms of this memorandum.

Q. Then this memorandum of agreement does embody the terms upon which you have received rebates from all these lines? A. I don't know whether we have received from all or not.

Q. From such of them as you have? A. Whatever ones we have received.

Q. Is there any line in there that you know of that you have not received rebates from, and if so what one?

MR. BURLINGHAM: Object on the ground that that

1856 is not a proper way to prove; it is not admissable.

A. If we shipped by those lines we received rebates in accordance with that.

Q. Are there any lines there you have not shipped by? A. You mean every year or since then?

Q. Since that time? A. I would not swear to these two German lines; but I think probably we have.

Q. You have shipped by the Lamport & Holt Line and the Prince Line, Limited? A. Yes.

Q. Every year? A. Yes.

Q. Since 1909? A. Yes.

Q. And you have received rebates every year since 1909

in accordance with this Exhibit 200 for identification, 1857
haven't you? A. According to the terms stated there we have received rebates.

MR. MONTGOMERY: I offer that in evidence.

MR. KIRLIN: Object to it as not proved and immaterial and irrelevant and incompetent.

Received as Petitioner's Exhibit 200.

Q. When this came to your attention, this Exhibit 200, what did you do with it? A. I just read it over.

Q. Did you send it anywhere? A. It was on file in the 1858
office and I put it back in the file.

Q. How long was it on file there? A. It had been on file for a long time when I saw it.

Q. Did you ever send it to Hard & Rand in New York? A. I should infer it had been sent there, but I don't remember sending it.

MR. BURLINGHAM: You did not produce it here.

THE WITNESS: No, sir.

Q. You did not bring it from Brazil; it was in their files 1859
here? A. I saw it here.

By Mr. Baldwin:

Q. Do you know of an instance of Hard & Rand here in New York requesting your office to send them a copy of the agreement under which rebates were paid? A. I have no doubt they have asked and we sent it.

Q. Don't you know as a matter of fact this was sent to Hard & Rand in New York by your office at such request? A. No, I do not.

Q. You don't know anything about it? A. Only by in- 1860
ference.

Q. And the first time you saw it was where? After you left Brazil? A. I am not sure whether Mr. Waddell brought it here yesterday, or I saw it here yesterday for the first time; I don't know whether he brought it here or I saw it on the desk.

Q. And the last time you saw it anywhere before you came to New York was on your files in Brazil? A. It was on my desk, yes.

Q. This is the one you saw there? A. Yes; it has some of our marks on it.

1861 By Mr. Montgomery:

Q. Was any written agreement ever executed providing for the payment of rebates by these lines? A. I have never signed any.

Q. Read the question. (Question read.) A. Not to my knowledge.

Q. This is the agreement; these are the terms under which you operated and received your rebates from these lines and have since 1909, is that right? A. That is right, yes. That is to say, we have lived up to the conditions and
1862 received the rebates.

Q. As provided here and in the amounts provided here; that is, the percentage provided here? A. Yes.

Q. And have observed in order to get them all the conditions? A. We have observed those conditions.

By Mr. Baldwin:

Q. This is the one on which you relied for the terms of that very paper? A. Yes, we relied that the lines would back up that paper.

1863

By Mr. Montgomery:

Q. What did that supersede, if anything? A. It superseded a previous agreement.

Q. A written agreement executed by the parties? A. No.

Q. Was it in the form of a notice? A. A notice to the shippers.

Q. I call your attention to Exhibit 12, entitled "Notice to Shippers," and commencing, "Shippers of coffee from Rio de Janeiro and Victoria are hereby notified," and so forth,
1864 and ask you if you have ever seen such a notice, the notice of which that is a copy? A. This is apparently the one that that one there superseded.

MR. BURLINGHAM: You mean Exhibit 200?

THE WITNESS: Yes, sir.

Q. And this notice, Exhibit No. 12, was treated by you simply as a statement on the part of the line that if you complied with certain conditions you would receive some rebates? A. Yes.

Q. And pursuant to that you did comply with the con-

ditions and did receive the rebates, did you? A. Yes; 1865
those conditions were modified.

Q. By some subsequent notice? A. This embodies the modification.

Q. I mean between the date of this Exhibit No. 12, July 15th, 1908, and the date of this memorandum of agreement, which is blank 1909, you received rebates pursuant to the notice Exhibit No. 12? A. We received rebates pursuant to these terms which are——

Q. 1908, Mr. Johnson; that is dated 1909; you could not have had anything to do with that in 1908; during 1908 you 1866
operated in accordance with the terms of this notice, Exhibit No. 12, didn't you? A. No.

Q. Under what terms did you operate? A. We operated to those terms and they were modified to conform to this.

Q. Before this was printed you mean, Exhibit 200? A. Yes.

Q. But no formal agreement was ever executed? A. No.

Q. It was just a statement of under what terms you would be paid rebates? A. Under what terms we would feel warranted in—we did not agree to those terms. 1867

Q. You never agreed to the terms in advance? A. I mean to say we made representations which indicated we would not follow those lines.

Q. You are now referring to Exhibit 12? A. Yes; therefore, those conditions were modified to conform to number 200, or No. 200 put in print the modifications which were made to the other.

Q. And you treated Exhibit 200 the same as you treated the Exhibit No. 12? That is to say, rather as a notice embodying a promise than as a contract to be executed? A. We never executed any contract at all. 1868

Q. And you never considered you were bound to the lines, but that if you did comply with these terms you would get the rebates? A. That is exactly what it states.

Q. And no agreement was ever executed? A. No.

MR. BURLINGHAM: That is, formally executed by signature?

THE WITNESS: No.

CROSS-EXAMINATION by Mr. Kirlin:

Q. Mr. Johnson, the business at Rio appears to be done

1869 under a different name from the business in New York; how is that; Hard, Rand & Company is your style in South America, and Hard & Rand in New York; are they different concerns actually? A. At present they are the same concern.

Q. They are composed of the same people? A. They have not always been.

Q. Straighten that out for us on the record; what is the origin of the present firm? A. When the firm was started out there there was a Brazilian partner and Hard, Rand
1870 & Company comprised a Brazil partnership.

Q. Then there were two partnerships, two sets of articles, a set for the Brazilian house and a set for the New York house? A. I don't know about that, it was before my time.

Q. There was a time when you were a Brazilian partner, as I understand it? A. Yes.

Q. You said before the partnership was a partnership between Hard & Rand and yourself? A. Yes.

Q. What did that mean? A. That is the registered part-
1871 nership in Brazil, Hard, Rand & Company.

Q. Separate articles drawn up there? A. Drawn up and registered as the company in Brazil.

Q. Consisting of certain individuals who were also members of the firm of Hard & Rand in New York? A. No, consisting of the firm of Hard & Rand and myself.

Q. Between the firm and yourself? A. Yes; no individuals mentioned.

Q. When did that end? A. That still exists as far as our books go.

Q. Does that still exist legally in Brazil? A. Yes.
1872

Q. That is the legal end of Hard & Rand in Brazil as registered there and actually consists of the firm of Hard & Rand on one part and yourself as an individual on the other part? A. Yes.

Q. And that is a registered partnership under the name of Hard, Rand & Company? A. Yes.

Q. Now, I gather that since then you have also become a member of the firm of Hard & Rand in New York? A. Yes.

Q. But the separate legal entity is still maintained in Brazil? A. Yes.

MR. MONTGOMERY: Separate legal entity, you mean a corporation or anything of that kind? 1873
MR. KIRLIN: He has told us.

A. It is a private partnership entirely; no corporation about it.

Q. In Brazil it is a registered company consisting of a partnership between Hard & Rand on the one part and yourself on the other, and so registered and recorded in Brazil? A. Yes.

Q. And Hard, Rand & Company is the company that conducts all the Brazilian business? A. Yes. 1874

Q. For Hard & Rand of New York? A. Yes.

Q. Buys coffee there? A. Yes.

Q. Sells it to Hard & Rand of New York? A. Well, more or less; that is what it amounts to.

Q. You draw against them, don't you, for the shipments? A. Yes.

Q. Have your documents discounted at the bank in the regular way, the bank holding the title during transit, and documents taken up here in New York by the New York house? A. Some business is done that way, yes. 1875

Q. Isn't that the method? A. The business is handled exactly as if the two firms were identical.

Q. You mean the distribution of profit and losses I suppose? A. No, as far as shipments; we do not necessarily draw against all the coffee we ship.

Q. Where you don't draw how do you do it? A. As we remit coffee, ship coffee and don't draw for it.

Q. Isn't that in cases where there is a balance owing on the books from the Brazilian house to the New York house? A. Yes, and the reverse may be true. 1876

Q. Where did this letter, Petitioner's Exhibit 199, come from; how did it get here? A. I brought that this morning.

Q. How did you come to bring it here? A. I was requested to bring it yesterday.

Q. Look at this document, No. 200, paragraph four, has that paragraph anything to do with your writing this letter? A. (Reading.) "That no exporter shall be allowed more favorable conditions than another." I don't know that I had that paragraph in mind. I had the spirit of the paragraph in mind.

1877 Q. From the tenor of the letter you apparently thought that some outside shippers were receiving more favorable terms than your company, or were trying to?

MR. MONTGOMERY: That is objected to; what do you mean by receiving more favorable terms, Mr. Kirlin?

MR. KIRLIN: That is what the letter says.

MR. MONTGOMERY: No, it does not, I beg your pardon. The letter does not say they were receiving more favorable terms.

1878 MR. KIRLIN: It says it seems to us unjust as supporters of the line.

MR. MONTGOMERY: What unjust? That they take their coffee there; not that they make more favorable terms; they were not getting as good terms; they were taking the berth rate.

Q. And continues by saying the "contemplated action seems to be unjust to the supporters of the lines"; tell us what you did mean? A. My idea was that we were
1879 sticking to the lines to secure good service, and people that did not do it were getting the benefit of the service and it did not seem to be fair.

Q. Was the upshot of this that these shippers that you protested about did or did not make shipments on the conference lines' steamers, or did it have any result? A. As far as my recollection goes they continue to ship by the conference lines.

Q. So that this did not come to anything practical, did it; then your protest did not amount to anything as a prac-
1880 tical matter, did it? A. I was satisfied with the result.

Q. How long have you been in the coffee business in South America? A. Since 1896, off and on. I have not been there all the time.

Q. When you went into this business did you find a rebate system on coffee in force, on coffee shipments?

MR. BALDWIN: I object to that as immaterial.

A. I could not state definitely whether it was or not.

Q. How long have rebates on coffee been in existence in the trades out of Brazil according to your recollection?

A. As far as I can recollect they have been off and on in 1881
existence.

Q. To Europe as well as the United States? A. Yes.

Q. Does your recollection go back as far as the days of the United States and Brazil Mail Steamship Company? A. I remember we used to ship by their lines, but I was a boy in the office at the time and I don't remember any of the particulars.

Q. Do you remember whether they had a rebate system or not? A. I could not say whether they had a rebate system or not. 1882

Q. There has been a rebate system in vogue during the greater part of the time that you have had experience with exports of coffee from South America, has there not? A. There has been——

MR. BALDWIN: Let my objection be noted to this question as immaterial and irrelevant.

Q. During any of the time has it been the practice to have definite agreements drawn up and signed between shippers and steamship companies, or have the rebates been 1883
given in pursuance of agents' notices to the trade? A. It is my impression that this notice idea is something new.

Q. When did they begin? A. Exhibit 12 I think is the first notice that ever was printed in that way.

Q. In 1908 and before that had there been contracts, business been done on the basis of contracts?

MR. MONTGOMERY: Do you mean business with these lines?

MR. BURLINGHAM: Rebate business.

MR. KIRLIN: Between Brazil and the United States 1884
and Brazil and Europe.

MR. MONTGOMERY: With these lines?

MR. KIRLIN: Any lines that were doing the business.

MR. BALDWIN: We will have to object to any lines not embraced within the conferences and the lines mentioned in these agreements.

MR. KIRLIN: I am enquiring generally about the course of business; never mind whose lines they were. A. Whether there was any contract in force when that notice to shippers was published I am not aware.

1885 Q. You do not get my purpose, Mr. Johnson; you say that public notices to shippers as far as your experience goes began with Exhibit 12 in 1908, I want to know in what manner the rebate system was handled prior to that? A. I say I do not recollect. I was in London the preceding five or six years and I did not keep track of that. I was not in charge in Brazil.

Q. While you were in Brazil prior to that, from 1897 to 1901, how was it handled?

MR. BALDWIN: Subject to the same objection.

1886

A. It is my belief that it was handled by private agreements between the particular firms and particular steamship companies.

MR. BALDWIN: I ask to have that stricken out on the ground that the question of his belief is immaterial.

Q. By belief I suppose you mean recollection? A. I know it was at times but for how long and at what times
1887 I could not say.

Q. You haven't such contracts? A. No.

Q. They were made by your office down there? A. They are not made in Brazil.

Q. You had them in your office, you know what they were? You looked at them, didn't you? A. I have seen copies of them.

Q. After 1908 the rebate system became public matter, did it not; notices were sent to all shippers notifying them of the terms on which rebates could be earned? A. I don't
1888 know that it became a public matter on that date; the form of notice to shippers was adopted on that date.

Q. Yes; when was that distributed, do you remember, in Brazil; it is dated the 15th of July, 1908? A. Just about that time.

Q. Distributed publicly about that time? A. Sent around to the various shippers, I guess.

Q. And from that time on the rebates had been public and open, had they not, to anybody who complied with the terms of the notices? A. There is no mention of any particular firm there; it was open to anybody.

Q. And it was open to shippers under those circulars and

is open to-day, now, to stop shipping by a conference line 1889
at any time they choose, is it not? A. Yes.

MR BALDWIN: I submit that the notices themselves fix the terms and the question, therefore, is incompetent and immaterial.

Q. There have been times, you say, when the rebate system was in force and times when it was not in force in your experience down there? A. That is as far as we individually were concerned.

Q. Has the existence of the rebate system had anything 1890
to do with the course of the trade; that is, has it been any more regular or stable or rates have been any more regular or stable, during the period when the rebate system was not in force than during the time when it was in force?

MR. BALDWIN: I object to that as calling upon the witness for an opinion, and no basic facts as to whether or not the rates were or what they were; not pertinent to any question asked upon direct and he has not shown himself qualified to answer.

MR. BURLINGHAM: There hasn't been any direct; 1891
it has been cross from the start.

Q. Do you get the question? A. No.

Q. (Question read.)

MR. BALDWIN: I object further on the ground there is nothing upon which to base any such comparison.

A. There are two or three questions and I cannot answer them all at once.

Q. Take them up and answer in your own way? A. In 1892
regard to the course of trade I don't think that it has been affected one way or another by a rebate system, but the freight rates have been more uniform and I don't think there is any doubt about it.

Q. The rates have been more uniform under the system? A. Yes, no doubt about it.

Q. And what about sailings; has there been any difference in sailings under the rebate system and— A. We find more regular sailings.

Q. You spoke in your letter of having supported the lines and apparently others have supported the lines; why

1893 did you support them? A. In order to secure a regular and good service.

Q. Did you secure a regular and good service by supporting them? A. A fairly regular and fairly good service.

Q. Did you secure a better service than you had had theretofore?

MR. BALDWIN: I object to that because nothing has been shown on the record as to what it was before and it is purely speculative?

1894 A. The service had been irregular before; sometimes better and sometimes worse.

Q. You secured a more regular service I take it? A. That was our idea.

Q. Isn't it a fact in your experience that the service has been generally more satisfactory, more regular, uniform, and rates more stable, when a conference was in force and the rebate system was in force than at other times?

MR. BALDWIN: I object as not pertinent to any question asked on direct, asking for a conclusion
1895 and nothing to base his comparison on.

A. I don't think there is any question that when a rebate system is in force the service is more regular and the rates more stable.

MR. BALDWIN: I ask to have the answer stricken out as not material.

Q. In your experience what are the advantages of the
1896 rebate system, if there are any?

MR. BALDWIN: I object to that as immaterial and irrelevant.

A. Regular service and stable rates.

MR. BALDWIN: What is that?

THE WITNESS: Regular and better service and stable rates.

Q. During the time that you have been in Brazil have there been any rate wars on?

MR. BALDWIN: What do you mean by rate war, competition? 1897

MR. KIRLIN: I mean the same rate wars that you referred to.

MR. BALDWIN: I said alleged rate wars.

Q. Were there any alleged rate wars on? A. I don't know the exact meaning of rate war. We ourselves carried on what might be called a rate war against companies more than once through charters, if that is what you call a rate war, chartering our own boats. 1898

Q. What were the circumstances that led you at times to negotiate a rate war of your own by chartering your own steamers? A. Dissatisfaction with the rates or the terms of the lines.

Q. And your shipments were large enough anually to justify you in doing that in case the services rendered by the existing lines were not satisfactory? A. As a rule it was a combination of two or three shippers.

Q. And you in that way secured such readjustment of the service as made it satisfactory to you? A. That is what we were after, yes. 1899

Q. That is always done, isn't it, in every trade?

MR. BALDWIN: I object.

A. I could not answer for that.

Q. It is always done in your trade, isn't it? A. Not that I remember. We always fight the rate if we think it is too high.

Q. And fight it in the way you have stated? A. Yes.

Q. And that is a practical method of fighting, isn't it? A. It has proved so. 1900

MR. BALDWIN: I ask to have stricken out what he thinks.

Recess taken until two o'clock P. M.

1901 AFTERNOON SESSION.

JOHN E. JOHNSON, JR., recalled.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. I want to ask you about this partnership business; do I understand in answer to the questions propounded by Mr. Kirlin that Hard & Rand of New York and Hard, Rand & Company of Brazil are separate partnerships? A. They are practically the same thing.

1902 Q. And the "company" which was tacked on to Hard & Rand was pursuant to some provision of the laws of Brazil which required a resident partner, isn't that it? A. That was not the original reason. The original reason, Hard, Rand & Company was started long before I know anything about it; there was some division of interest and it had all been continued. At present the registered company in Brazil is to conform to the Brazilian laws.

Q. But for all the purposes of the business of coffee exports from Brazil—— A. They are identical.

Q. They are identical? A. Yes.

1903 Q. In answer to a question propounded by Mr. Kirlin you said that you were supporting the lines, meaning the conference lines, to get good service; do you mean by that that your support involves the fact that your company, that is, your partnership, confined all of its shipments to these conference lines? A. It depends on the rates they charged.

Q. That was your purpose, was it? A. Up to a certain rate it was, yes.

1904 Q. And during the course of business that you had during these periods of years you did, with possibly a few exceptions, confine all of your shipments to the conference lines? A. We have recently; there has been several quite extended intervals where we did not.

Q. Well, from 1908 down to the present time you have been confining your shipments to the conference lines? A. I think we have; we have from 1909 I am sure, and I think we have from 1908.

Q. Now, when you spoke of those who were loyal to the lines, when you wrote this letter, you meant those shippers in Brazil who confined their shipments practically to the conference lines? And also to this Royal Mail Steam

Packet Company and the other line mentioned in that letter, is that right? A. Yes, to the ports concerned. 1905

Q. And it was your—you had discovered by examining the manifests down there that a number of shippers who were not confining their shipments to these conference lines and the other two lines I have mentioned, were allowed to ship their goods on conference lines at the same time they were shipping goods on outside lines, is that right? A. Two firms.

Q. And the fact that you had in mind was that since Hard & Rand were confining all of their shipments to the conference lines and getting what is known as the berth rates, that outside shippers who were not confining all to the conference lines ought not to have the berth rates, is that it? A. My idea was that we were, through our, as you call it, support, we brought about what we call a fairly good service, and we did not think that those who did not contribute to that support should profit by the good service. 1906

Q. You mean to say that because Hard & Rand and other shippers who confined all of their shipments to the conference lines brought about what you considered a better service, is that it? A. By confining them to a certain difference in rate; it was not necessary to confine them to lines if the difference in rate was large enough. 1907

Q. You understood that it was the general practice that any shipper who did not confine his shipments to the conference lines and to the other two lines—in the European service—would not be entitled to that ten per cent. under certain conditions, that is right, isn't it? A. It would depend on the rate.

Q. What you wanted to bring about was that as shippers, loyal, that is to say, confining all your shipments to the conference lines, you were in a position not as favorable as the independent shippers who did not, that is the idea, isn't it? A. The idea is—— 1908

Q. Now, isn't that the idea? A. Not exactly.

Q. What was the idea? A. The idea is that we want a year round service.

Q. Yes? A. If we support the lines when there is very little coffee and they give us a regular service we also support them when there is plenty of coffee and outsiders may come in and make a profit. We put one against the other.

1909 and the man who takes advantage of the cheap rates when there is plenty of cargo and takes advantage of the regular service when there is very little cargo he may get an advantage over us.

Q. He gets the advantage because he can ship at berth rates, isn't that the idea? A. That is the idea.

Q. You say that after you sent this letter that you did not take any further steps excepting to look up in the manifests to see whether or not these outside shippers were shipping by any of the independent lines? A. As far as
1910 I recollect I took no further steps at all.

Q. But you took that step, didn't you, Mr. Johnson? A. I don't know that you can call that a step; that was an occupation.

Q. It was some endeavor upon your part to ascertain what effect your letter produced or brought about, wasn't it? A. I wanted to see what was doing.

Q. And you found that in a concrete result; that is to say, you found that the manifest showed that the independent shippers that theretofore had been getting service from the conference lines and the independent boats were
1911 confining their shipments to the conference lines, isn't that it? A. I didn't know just that the two firms referred to had shipped on outsiders after that.

Q. You found that those two firms did not ship on outside lines? A. Not as far as I noticed in the manifests.

Q. And that is the reason why you said a moment ago that the results to you were satisfactory, because you found that the people that you particularly complained about were then confining their shipments to the conference lines, is that right? A. So far as I noticed from the manifests.

1912 Q. Isn't that so as you found from the manifests? A. That is what I observed from the manifests.

Q. And you believed the manifest was about the best evidence you could obtain? A. I thought it good for that.

Q. And therefore it was satisfactory to you? A. That is what I said, it was satisfactory.

Q. Did you notice in these off and on years when rebates obtained whether any rebates were paid to shippers from United States to the Brazilian ports? A. I don't know anything about rebates.

Q. That you don't know? A. No.

Q. Was the period when you noticed that there were re-

bates paid, when these lines were in conference, and when 1913
they were not paying rebates that they were not in conference, was that your observation? A. Not in conference?

Q. In combination? A. In combination?

Q. Yes? A. Well, I don't know.

Q. You don't know that? A. I don't know what their private arrangements were at all.

. Prior to 1908, that is to say, in 1907, were these conference lines paying rebates to Brazilian shippers? A. Yes, off and on for a great many years before that.

Q. That does not answer my question. A. What do you 1914
mean by prior?

Q. I am speaking about 1907, a plain question? A. I don't remember the exact year.

Q. Isn't it a fact that so far as your recollection now serves you that the period when rebates were being paid these lines were not in combination? A. Were not in combination?

Q. Yes, not in combination? A. No, I don't think so. I think during the period rebates were paid the lines had an understanding with each other; what it was I don't 1915
know.

Q. They had an understanding; I call it combination; both were operating so that a shipper could ship on any one of the lines under a contract he made with either one of the lines? A. There were lines that were not combined.

Q. They were not combined, none of them? A. I don't say none of them.

Q. Weren't the lines that were engaged in service from New York to Brazil, weren't they in conference at that time? A. I don't know that the Hamburg-American Line 1916
had any steamers from New York then.

Q. How about the Lamport & Holt and Prince Line? A. I don't know; they at times have been in conference and at times have not as far as I know.

Q. Come back to 1907; don't you know that in 1907 for a period they were not acting together? A. I don't know that.

Q. You don't know that? A. No.

Q. Are you prepared to say now any rebates were paid in 1907 to Hard & Rand? A. I should have to look at the accounts to see; it is my impression there were.

1917 MR. KIRLIN: When you said lines mentioned in that circular you meant——

THE WITNESS: I was referring to No. 200.

Q. Now, you said in answer to a question of Mr. Kirlin's that under the rebate system the rates were more uniform; did you mean to say by that that they were uniform among the various carriers mentioned in that Exhibit 200? A. No, they do not fluctuate from month to month and day to day.

1918 Q. But when it fluctuated for one it fluctuated for all, didn't it? A. As long as there was a combination.

Q. The combination existed since 1909 at least to your personal knowledge? A. Yes.

Q. And these rates were uniformly upward during all of that time, weren't they? A. No.

Q. Uniformly? A. No; they are higher now than at that time.

Q. Weren't they higher in 1909 than they were in 1908? uniformly? A. No, I don't think so.

1919 Q. Weren't they higher in 1910 than they were in 1909, uniformly? A. I couldn't say without looking it up.

Q. And 1911 higher than it was in 1912? A. They were lower in June, 1911, than they were in March, 1911.

Q. Taking the general average for the year, didn't they average up higher each year? A. There has been a general advance since 1908, yes.

Q. And a uniform advance? A. No, it is not uniform.

Q. For all the lines I am speaking? A. All the lines charged the same rates, yes.

1920 Q. In what respect did the rebates affect the question of the uniformity of rates? You remember Mr. Kirlin asked you the question whether or not rebates did not affect that? A. I don't know; you will have to ask the companies that.

Q. Mr. Kirlin asked you that question and as I recollect it you said it did? A. I said the practical result as far as my observation has been it has, yes.

Q. How does it? A. I don't know how it does.

Q. Then you don't know whether the question of rebates affected the uniformity of rates at all, do you? A. I said it helped.

Q. In what way does it operate upon the rates to make 1921
it uniform? A. Ask the steamship companies.

Q. I am asking you? A. I don't know how they regulate their affairs.

Q. What you mean to say, you look to the rates, and you think it is something like this: you find the rates have become uniform and there is the rebate and from that you assume the rebate has caused the uniform rate? A. I don't know that it is a rebate; it is a combination.

Q. I only asked you this question because in response to a question of Mr. Kirlin you stated that rebates helped at 1922
uniformity of rates and now I am asking you how? A. I was judging from experience only. I look at the course of rates when there is a rebate and when there is not a rebate and I find it much more uniform when there is a rebate.

Q. Give us some concrete example, some year when the rebate itself affected the question of uniformity independent of combination?

MR. KIRLIN: He said it was both.

1923

A. We had chartered boats from 17 to 29 cents when the regular Brazil rate would be all around the place.

Q. Exactly, and you found that when there has been combination there has been rebate, that is right, haven't you; when there has been combination there have been rebates usually, and when you have combination you have uniformity of rate? A. I don't know about that. I imagine that where there are rebates there are combinations; whether the reverse is true I am not so sure; there may be combination without rebate.

1924

Q. What I want to ascertain from you is this: was it the result of combination that brought about uniformity in rates or was it because the carriers paid rebates to shippers? A. I could not tell you that; I am not a shipping man.

Q. Then when you answered Mr. Kirlin a while ago that rebates affected or helped to bring about uniformity in some way you did not know what you were talking about, did you? A. I certainly did. What I mean to say—perhaps I did not express myself clearly—I meant to say that my experience is that when there is a rebate system the

1925 rates are more uniform than at other times; whether it is because of the rebate system or not I am unable to say.

Q. From your observation when you have found rebates existing you have found combinations at the same time, haven't you? Now, what is your best recollection? A. I have found apparent combinations.

Q. How would the question of rebates affect the regularity of sailings? A. I would like to qualify that last statement, because we have rebates—there are more than one instance of rebates where there is no combination ex-
1926 isting today.

Q. In this Brazilian trade? A. Not between the United States and Brazil, no; a rebate system from Brazil to other ports. We get a regular rebate and there is no competition.

Q. But that does not depend—— A. There is no combination, only one line.

Q. Now, take it with reference to trade to ports in the United States, or to the United Kingdom or the Continent of Europe, where there are separate lines, can you now
1927 recall any period of time when they were not acting in concert that rebates were paid, can you? A. I haven't it at my fingers' ends at all, but I know we used to get rebates from Mediterranean lines for example, and there was no combination between them.

Q. Have you any instances when you have been paid rebates to American ports when these lines were not in agreement? A. I cannot tell whether the lines are in agreement or not; that is something between themselves.

Q. Well, they purport to be in these agreements we have here, or these notices to shippers here, an agreement or
1928 what purports or seems to be some concerted action? A. Yes, but not in recent years.

Q. Now, on the question of the regularity of sailing, how would the payment of rebates affect the regularity of sailing; Mr. Kirlin asked you that question and you said it did. Now, how? A. If you will read that Exhibit 200 over you will find that the lines guarantee regular service.

Q. Well, that may be true, and probably is, but how does the question of paying rebates affect that? A. They are both in the same circular.

Q. Simply because they are in the same circular? A. The whole thing is one thing.

Q. It was not, then, this loyal support that you have 1929
spoken about that caused the regular sailings but the loyal support in connection with rebates, is that it? A. The loyal support in connection with rebates, and with regular service both come into consideration.

Q. I am speaking of what caused regular service; you answered Mr. Kirlin by saying that the payment of rebates conduced to the regular sailings; now, I am asking you how? A. I say that the entire circular conduces to regular service; I cannot pick out one class or another.

Q. Then you mean to say the rebates separate and dis- 1930
tinct from that cause regular sailings? A. They assist.

Q. How does the fact that a person is allowed a discount from a bill rendered for carrying service affect the regularity of the sailings? A. I only know from experience that it does.

Q. You don't know how it does it, but you know that it does? A. I know it does. There is some steamship company has some reason for giving a regular service on the basis of that circular; whatever their own reasons we find they give it though.

1931

Q. Do I understand you to say it was not rebates standing alone, and that it is by reason of the general terms set forth in this Exhibit 200 that has brought about this regularity of service, is that it? A. It is the general terms of that circular, yes.

Q. Which, among other things, embraces the right of the shipper to ship his goods by any one of those lines mentioned therein? A. Or other lines at a difference in rate; at a moderate difference in rate.

Q. You don't mean to be on record here as saying re- 1932
bates pure and simple affected the question of sailings? A. They assist, yes.

Q. Just assisted? A. Yes. Rebates alone without regular service would not do it, but rebates bring about the regular service.

Q. Now, you say you supported the lines to get better service; you mean to say by that that you patronize these conference lines and the other two lines mentioned in Exhibit 200 solely in order to get better service, is that the idea? A. We support that for the object of getting a good and regular service.

Q. And that support again involves as far as the Ameri-

1933 can ports are concerned your confining your shipments entirely to those lines? A. No, not at all.

Q. Well, above a certain rate? A. At a certain difference in rate.

Q. I mean to say at a certain difference in rate, as provided for in that circular? A. Yes, according to the clauses in the circular.

Q. I understood you to say in answer to a question of Mr. Montgomery that Exhibit 200 in some way or other superseded other forms of agreement that existed before
1934 that time. A. No, not exactly superseded; they embodied the corrections made in the first notice to shippers, Exhibit 12; no rebates were paid on the basis of No. 12.

Q. How long had you been a regular supporter of the lines mentioned in Exhibit 200 prior to 1908? A. I couldn't say without looking up the books.

Q. Well, just as to the approximate time how long? A. I was not in Brazil at that time and I did not keep close track of it; I was in London. From 1901 to 1907 I was in London and did not keep close track of the Brazil business.

Q. You said in answer to a question of Mr. Kirlin that
1935 there were some times when the service was regular and sometimes when it was not regular? A. What service was that?

Q. I don't know. You spoke about it generally; the question was put to you generally whether the service had or had not been at regular times and sometimes it was regular and sometimes less regular? A. I don't remember that. Can you tell me what question that is an answer to?

Q. Do you recollect such a question being put to you and answering it that way? A. I don't know whether it re-
1936 ferred to times when there was rebate or no rebate.

Q. When you noticed the service was not regular were rebates being paid then? A. The services when there were no rebates have been very irregular as a rule.

Q. At the same time was there a conference? A. I suppose—I don't know what arrangements there were between the lines; I couldn't say; we cannot tell anything about their internal arrangement.

Q. Did you say that you carried on this rate war against these lines? A. We have done it several times.

Q. Due to the regularity of the service? A. Due to the rates of freight.

Q. Oh, the rate of freight? A. Yes. 1937

Q. When you thought that they were exorbitant, is that the idea? A. Yes.

Q. And when did that period exist? A. That was many years ago.

Q. How many years ago? A. I couldn't tell you.

Q. Was there any conference then between any of these lines; you understand what I mean by conference, don't you? A. You are getting back before the time I was directly interested in this and I cannot answer it.

Q. You answered the question of Mr. Kirlin; Mr. Montgomery didn't ask you any of these questions, and you said at the time you carried on your own rate wars? A. There was; we chartered. 1938

Q. Well, when was it? A. It was a good many years ago.

Q. You have not done any chartering since 1908, have you? A. No.

RE-CROSS-EXAMINATION by Mr. Burlingham:

Q. Mr. Johnson, I have understood you to say several times that you supported these lines named in circular, Exhibits 200, in order to obtain good and regular service; did you get good and regular service? A. I have already answered that question; we had fairly good and fairly regular. 1939

Q. Has it improved during the last five or six years? A. The quality of the boats has improved.

Q. And how is it as to regularity? A. The regularity still leaves something to be desired.

Q. I understand you have not chartered any boats during the last five years to meet the rates of these conference lines, is that so? A. We have not chartered any. 1940

Q. You are, of course, familiar with freight rates all over the world, aren't you? A. I try to keep posted.

Q. And you appreciate that there has been a very extraordinary rise in freight rates all over the world in the last two years, don't you?

MR. BALDWIN: I object to that; that question should not be asked him at all on cross; anyhow it is immaterial; also the question is improper.

Q. (Question read.) A. There has been a very consider-

1941 able rise in rates at which we could charter for coffee cargoes from Brazil to the States.

Q. But apart from that has there not been a very considerable rise in freight rates all over the world?

MR. BALDWIN: I object to that.

A. As far as I could judge there has been. I judge from the newspapers.

MR. BALDWIN: I ask to have the answer stricken
1942 out as incompetent and immaterial; he does not know anything about it.

Q. You have spoken, or been asked several times about conferences; I suppose you have been in business in this same coffee business when conferences have existed among steamship lines and when they have not, isn't that so? A. I have no means of knowing when conferences do not exist or when; I judge the times they do, but when they do not I cannot tell.

Q. You said several times you don't know how the in-
1943 ternal arrangements or agreements of steamship companies are? A. I have no means of knowing.

Q. Therefore, you don't know what the terms of conferences are, you have no knowledge on that subject? A. No.

Q. But, like everybody else, you infer from certain facts, do you not? A. I make inferences when the propositions are made to the shippers.

Q. I suppose when you find rates the same for a number of lines you infer there is some agreement, is that so? A. That seems a natural inference.

1944 Q. And when you have spoken of the effect of rebate, have you been considering rebates as an incident of conference agreements? A. I should judge they are one of the elements of it so far as I can see.

Q. And as I understand you, during the period that there have been rebates, there has been a greater stability in freight rates, less fluctuations, and a greater regularity of the sailings, is my understanding correct? A. That is my observation.

Q. Were you in Brazil in November, last? A. Yes.

Q. When did you come to this country? A. I sailed in February.

Q. Was there some agitation of the question of rebates there last autumn? 1945

MR. BALDWIN: Well now, I object to that; how can that be competent?

MR. BURLINGHAM: Cross-examination.

MR. BALDWIN: Pertinent to anything I asked on direct?

MR. BURLINGHAM: That is what I call it.

MR. BALDWIN: I object as immaterial, and incompetent as to what the question of agitation did in this issue. 1946

A. Agitation you say on the subject of rebates?

Q. Yes, in Brazil? A. On the subject of rebates?

Q. Yes? A. There was agitation on the subject of the terms of that circular as a whole, which included rebates.

Q. Were there any Government regulations promulgated in Brazil on the subject?

MR. BALDWIN: I object; if there were they would show for themselves.

MR. BURLINGHAM: We haven't got them. 1947

Q. (Question read.) A. When?

Q. Last autumn? A. Last November you said, didn't you?

Q. Well, about that time? A. Not that I recall.

Q. When was it?

MR. BALDWIN: Same objection; immaterial, irrelevant and incompetent; about a thousand miles from any issue in this case. 1948

A. I understand there is a law passed giving the president authority to deny port privileges to any companies giving rebates.

Q. Was that ever enforced?

MR. BALDWIN: I object and ask to have the question stricken out.

Q. (Question read.)

MR. BALDWIN: I object to that.

1949 A. Not so far as I know.

Q. Was your firm a party to any application to the Governmental authorities at Brazil to suspend the operation of that law, or not to enforce and apply it?

MR. BALDWIN: Objected to as immaterial, irrelevant and incompetent; not the best evidence in any event.

MR. MONTGOMERY: And leading.

MR. BALDWIN: And asks for a conclusion and is not within any issue of this case.

1950

A. There was some circular signed by the people in Rio, but I could not tell you exactly what the tenor of it was.

Q. You signed it, didn't you? A. I signed some circular letter, but my recollection is that it was addressed to the lines and not to the Government; I am not sure about that.

Q. Isn't it a fact that all the coffee shippers of Brazil, practically all, on the sixth of November or thereabouts, 1912, petitioned the Brazilian Government to suspend the operation of the regulation which was about to be put into
1951 effect prohibiting the use of the rebate system?

MR. BALDWIN: Objected to as immaterial, irrelevant and incompetent, asking for the contents of the petition when the petition would be the best evidence, and asking for a conclusion of the witness as to what it contained in any event, and not within the issues here.

Q. Is it not a fact? A. I could not answer that question. In the first place I cannot carry dates in my head.

1952 Q. Disregard the date, it is only approximate, while you were in Brazil? A. I don't think the terms of the circular signed in Brazil were quite of that tenor; something in the same line, but not—that is, more or less signed in Santos as I understand.

Q. I didn't say in Rio? A. You said all coffee shippers of Brazil; there is quite a different circular signed in Santos than in the others.

Q. Did you sign both? A. No.

Q. Which one did you sign? A. I signed one in Rio.

Q. I understand you to say a law had been passed? A. I don't think it was passed at the time.

Q. A law had been passed authorizing some Govern- 1953
mental official to prohibit rebates, was that it?

MR. BALDWIN: Objected to for the same reasons I urged before, and I can tack on a few other reasons to show what a ridiculous question it is, but I don't suppose it is necessary.

A. The law was only under discussion at the time; it has not been passed.

Q. But, at any rate, it has not been put into effect? A. Not so far as I am aware. 1954

Q. And has the rebate system continued in full force in Brazil to this day?

MR. BALDWIN: I object to the rebate system. If the question is confined to rebates under these circulars that is competent, but a rebate system, I don't know whether that is the Government's system or a conference system.

MR. BURLINGHAM: You can find out on the re-cross.

MR. BALDWIN: You mean the re-direct. 1955

Q. I ask whether that system is still in force? A. There has been no change in the coffee situation in some months.

Q. Have you a copy of that circular with you? A. Which?

Q. That you say you signed? A. No, I don't remember the contents of it.

Q. You recollect the substance of it, don't you? A. Only indefinitely.

MR. BALDWIN: Same objection. 1956

MR. KIRLIN: It gave some reasons why the Americans should sign it, that it would be inexpedient to have the legislation enacted or put into operation, wouldn't it?

MR. BALDWIN: I object to that as absolutely speculative, as calling for a conclusion and operation of another person's mind without any theory of evidence to make that competent.

Q. Will you answer? A. The circular which I signed

1957 was in effect that we as coffee shippers preferred the continuance of the present shipping arrangement.

By Mr. Kirlin:

Q. You stated the reasons why you thought the continuance of the existing system of rebates was best for the shippers, didn't you? A. In that circular?

Q. Yes? A. I wouldn't say. The one signed by the Santos shippers——

1958 MR. BALDWIN: Move to strike it out as he says he does not know anything about it excepting by belief.

Q. What reasons did the Santos petition give?

MR. BALDWIN: Object for the same reasons I have offered to both circulars.

A. I could not remember it all; it was a pretty long thing.

1959 Q. Didn't it set forth these three reasons why the merchants thought a continuance of the rebates was desirable——

MR. BALDWIN: Wait a moment; I object.

MR. KIRLIN: I haven't got the question finished yet.

Q. (Continuing.) First, that——

MR. BALDWIN: Wait a moment; I object.

1960 Q. Didn't the Santos petition set forth the advantages to merchants arising from the rebate system to be constancy and quality of freight, whatever the quantity shipped might be, arrangements and maintenance of regular sailings, and running steamships of better class and of better speed, thus offering at all times sufficient tonnage to exporters independently of the fluctuations of the market; wasn't that substantially the grounds as you remember them? A. I couldn't say; something in that line.

Q. And didn't your Rio petition also embody some similar reasons?

MR. BALDWIN: Same objection.

A. The Rio petition was not so verbose. 1961

Q. Could you get us a copy of that Santos and Rio petition? A. I don't think we have them on file here. We can get them from Rio; I don't know whether I kept a copy really.

Q. I wish you would get us copies, if you can? A. I am not sure I kept a copy.

Q. These proceedings were published in the official paper in Rio, weren't they, the Diario Official?

MR. BALDWIN: Objected to as immaterial.

1962

Q. Everybody knew about that down there? A. All the government measures I know are published in the Diario.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Johnson, what agreement, or some form of agreement or circular, did the shippers draw off about the same period with reference to rebates on shipping by aeroplanes, do you remember? A. That has not come to my knowledge, no.

Q. Was that discussed at some time? A. Not to my 1963 knowledge.

Q. Have you had discussions pretty generally with everybody in Brazil about the contents of those circulars so that you know the situation of their minds? A. Brazil is a very large country, about 20 odd million inhabitants.

Q. When Mr. Kirlin asked you what you generally read and what you generally understood you did not intend to respond to that that you had canvassed everybody at that time all over Brazil? A. No, I am too busy.

Q. Now, as a matter of fact these circulars that Mr. Kir- 1964 lin attempted to interpolate into the record by reading from something, you don't know anything about the contents of them, do you really? A. I have no definite recollection. I know in a general way what they were, in a general way they were to prevent the Government from passing this measure.

Q. Do you remember who they were gotten up by? A. I expect they were gotten up by the steamship companies.

1965 JAMES WADDELL, recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

MR. BALDWIN: With reference to Mr. Waddell's testimony, I offer in evidence Exhibit 126 for identification, that is letter of April 19th, 1908; Exhibit 127 for identification, letter of Hard & Rand, dated February 17th, 1909; Exhibit 128 for identification, being copy of weigher's return; Exhibit 129 for identification, claim for damages
1966 by Hard & Rand; Exhibit 130 for identification, letter of April 28th, 1910; Exhibit 131 for identification, memorandum of Hard & Rand concerning damages, dated April 28th, 1910.

MR. KIRLIN: To whom are these letters addressed?

MR. BALDWIN: All the letters are addressed to Lamport & Holt. Exhibit 132 for identification, letter of July 8th, 1910; Exhibit 133 for identification, letter of January 4, 1911, and Exhibit 134 for identification, letter dated August 11th, 1911.

MR. KIRLIN: We object to them all as immaterial
1967 and improper.

Received in evidence as Exhibits 126, 127, 128, 129, 130, 131, 132, 133 and 134.

Q. There were certain things you were to prepare, have you got them? A. I have the notes, payments of rebates made in New York.

Q. Mr. Waddell, you have already testified to having received from Busk & Daniels of the Lamport & Holt Line rebates amounting to $13,657.18 on January 10th, 1910;
1968 now, on September 10th, 1908 did you receive rebates from Busk & Jevons on behalf of the Lamport & Holt Line, and if so how much?

MR. KIRLIN: Are these rebates on north bound cargo?

MR. BALDWIN: I don't know.

A. Yes; $7,263.48.

Q. This is rebates on coffee arriving from Brazil here? A. Yes.

MR. KIRLIN: May it be understood that all the evi-

dence as to rebates on north bound cargo is subject 1969
to our objection.

Q. On September 10th, 1908, Hard & Rand received rebates of $7,263.48, from Busk & Jevons, did they not? That is to say, the rebates were paid directly here? A. Yes.

Q. In New York? A. Yes.

Q. On March 7th, 1910, a rebate amounting to $47.75 appears to have been paid by Busk & Daniels direct; now, just take that memorandum I am reading from, just state 1970
what the rebates were for the dates after that that you received direct? A. March 30th, 1910, $8.30; December 27, 1910, $12,481.48; April 19th, 1912, $6,166.57.

Q. Have you looked over your records to find what rebates Hard & Rand had received from any of the other conference lines? A. At New York here?

Q. Yes? A. That was all according to our books that we have been paid here in New York during that period.

Q. Here is an item, on this memorandum, of January 7th, 1910, from Hamburg-American Line $347.81? A. Yes, 1971
that is right.

Q. And that was all you found was paid here in New York since 1907? A. That is all.

Q. You were also asked to produce the rates on coffee from Brazil scheduled by the Lloyd Brazileiro for each of these years? A. I spoke to Mr. Montgomery about that and he said he would get it from another source; it would be very inconvenient for us to get it.

Q. You were also asked to produce a memorandum of a cable sent by Hard & Rand to their Rio house, concerning the offers of the Lloyd Brazileiro to carry coffee; do you 1972
remember that? A. Yes.

Q. Have you got it? A. I have to refuse to produce that; that is a matter of private business of our own and nothing to do with the conference lines.

Q. You refuse to produce it? A. I do.

Q. On what ground? A. On the ground that it has nothing to do with any communication with regard to the conference lines' business.

Q. Have you done this under advice of cousel? A. No.

Q. Your own? A. Yes.

Q. Were you ever subpoenaed to produce it? A. No.

1973 Q. Since you have not been subpoeaned to produce it I will have to subpoena you to produce it. You were requested also to give the amount of rebates paid to Hard & Rand on shipments of coffee to Europe from the year 1907 down and including the better part of 1912; have you got that? A. I have the rebates here for the years 1908 to 1909 and 1909 to 1910; before that there were no rebates on American Shipments by the conference lines.

Q. Just state what they are?

MR. KIRLIN: I object to it as immaterial and ir-
1974 relevant and outside of the issues of this case.

A. September 1st, 1908, to August 31, 1909, shipments from Brazil to Europe, total rebates collected for the year $16,206.26.

MR. KIRLIN: Paid where?

THE WITNESS: Paid in Europe, and perhaps partly in Brazil; I am not sure whether part was paid in Brazil.

1975 Q. Where in Europe? A. In London.

MR. BURLINGHAM: None here?

THE WITNESS: No.

Q. Go ahead? A. The year 1909 to 1910, that is, from September 1st, 1909 to August 31, 1910, $4,688.85.

Q. What lines are you speaking of? A. Hamburg-South American, Hamburg-American, North German Lloyd Royal Mail.

1976 Q. Go ahead? A. In the year 1908 to 1909 there was nothing collected from the Royal Mail. That is all, those two years.

Q. And that embraces all the rebates that were paid to Hard & Rand by any one of these lines other than you have testified to in Europe during those years? A. Yes.

Q. From 1907 down to and including 1912? A. No, that is only up to August 31st, 1910.

Q. Why didn't you——? A. I think I gave the other figures before, as far as I know.

Q. I think not? A. I haven't a note to that effect to bring them.

Q. Will you get them shortly? A. It says, 1907, 1908, 1977
1909 and 1910 on the memorandum I have.

Q. Will you get them, Mr. Waddell, when convenient?
A. Yes. You mean up to when?

Q. Right down through 1912?

MR. KIRLIN: Are those last amounts paid abroad too?

THE WITNESS: Yes.

Q. While those rebates were paid—you mean by that they were paid to Hard & Rand in London or the Liver- 1978
pool office? A. Either to Hard & Rand in London or Hard, Rand & Company in Rio.

Q. And in the due course of business the respective officers at London or in Rio would account to Hard & Rand here for those rebates? A. Yes, by book entry.

Q. That is to say, in the usual way of credits and debits?
A. Yes.

Q. Now, Mr. Waddell, where you import coffee for jobbers or others than yourself you call that cost and freight business, don't you? A. A certain kind of business, yes. 1979

Q. Now then, what is involved in the cost of freight business; that is, what do you mean by certain kind of business? A. It means that all the charges except the freight is payable by the buyers.

Q. By the buyers? A. Yes.

Q. And who pays the freight? A. The buyer actually pays the freight but it is credited by the seller in the invoice.

Q. That is to say when the coffee is delivered to Hard & Rand, we will say, in Brazilian ports, he has already 1980
made arrangements with the seller and with Hard & Rand, if they are the seller, that the cost price to the purchaser includes the freight? A. Yes.

Q. Under the cost and freight business do the purchasers of the coffee, under those circumstances, are they allowed the rebates that Hard & Rand get on those shipments? A. The rebates are allowed to the shippers, not to the receiver.

Q. Then, in other words, Hard & Rand under those circumstances would get the rebate and the purchaser would not get any benefit of any rebate at all? A. Not that I know of.

1981 Q. Are there any instances where in this cost and freight business that the freight is actually in the first instance paid by Hard & Rand? A. I don't remember any, because it is not usual to do so in that kind of business.

Q. These purchasers that you have been speaking about are the usual jobbers, are they? A. Yes, usually.

Q. And, therefore, under this method of transaction the jobber really pays the freight? A. He makes the practical payment of the freight.

Q. I know, it is charged up against them. His coffee
1982 stands him that much, whatever the purchase price is, and the freight? A. No, because he is credited with the freight in the invoice in the first place by the seller, but the purchaser makes the actual payment there.

Q. But Hard & Rand do not? A. They do not. They credit it in their invoice; it is practically paid by the shipper, but not actually.

Q. I am speaking actually now. I want to know how it works out, who pays it in the last analysis? A. The shipper.

1983 Q. You mean Hard & Rand? A. Hard & Rand, yes.

Q. Do they get recompensed for it in any way by the purchaser? A. No, because when they sell cost and freight they agree to ship the coffee to a certain port and pay the freight and they pay the freight by crediting the freight in the invoice.

Q. In other words, the purchase price involves the freight in the first instance? A. Yes.

Q. So in the last analysis the shipper does not pay the freight, does he? A. I do not know whether you are asking about the actual payment or who stands it?

1984 Q. Who stands it? A. The shipper.

Q. And you mean to say that Hard & Rand pay that freight, stand the freight rate? A. They stand the freight as they credit it in the buyer's invoice.

Q. Supposing that a purchaser down there should buy from Hard & Rand 500 bags of coffee at, we will say, 20c. a pound, is that the way they buy it, by the pound? A. I wish they would.

Q. I am using that as an illustration. We might wish that they wouldn't. Now, would that 20c. per pound include the freight rate, the cost of freight? A. Yes.

Q. It would? A. The shipper has to pay it out of the 20c.

Q. So that in the last analysis the jobber who had pur- 1985
chased the coffee does not pay that freight at all? A. No.

Q. So then, Hard & Rand would realize on that the 20c. less the actual cost of the shipment? A. Actual cost of the freight, yes.

Q. You have another system of importing for your own account called "owner's account," haven't you? A. Yes.

Q. You have already testified that when you sell that up here upon its arrival that it is your purpose to get for the coffee what it costs you to bring it here, the purchase price and your carrying charges, and that taking into account the 1986
market you try to sell the coffee so that your profit will be above that which it has cost you to bring it here? A. We try to, but we must sell it at the market.

Q. Yes, but I say generally speaking that is your purpose in trying to do? A. Yes.

Q. So that the coffee going into consumption, the consumer under those circumstances has got to pay the cost of transportation, that is right, isn't it? A. The consumer buys at the market price; the market price is not controlled by the freight rate.

Q. Yes, but the market price as a rule for coffee per 1987
pound is above what it costs you, together with charges, isn't it; otherwise you couldn't do business? A. Yes, on the average it must be.

Q. Now, do you mean to say that importing coffee by the cost and freight method that you really bring that coffee in, or sell that coffee and subsequently deduct the amount of freight that the purchaser in the first instance paid by a system of credit? A. I don't understand that question. Is this talking about direct shipments for our own account now? 1988

Q. No; you have already shown that in the final analysis; the consumer if you are doing this on a legitimate basis, that is to say, a profit carrying basis, has got to pay the carrying charges? A. Yes.

Q. Now, if I understand you correctly, with reference to the cost and freight method of handling business, you are doing business under those circumstances under a more unfavorable situation than when you import for your own account, isn't that so, if you give the shipper the credit for the carrying charges that he has already paid? A. But we sell the buyer on the basis of the freight; he pays the

1989 freight in the price in the first place. We sell him at 20c. you say, cost and freight; that pays the freight. We can afford to deduct his freight if we sell at 20c.

Q. Then the purchase price includes the probable freight price, is that it? A. Yes.

Q. In other words, you sell upon such a favorable basis that you take that into consideration in the first instance? A. We usually figure on what we think the freight is going to cost.

Q. Now then, either the purchaser or the public get the
1290 benefit of that rebate which you get? A. There are so many things to be considered in that. The purchaser will only pay the market price for coffee here; we as shippers have to figure whether it pays to sell it at that price, that is all. We know what the freight rate is going to be and we figure on that basis.

Q. But in fixing the price and having in view the market do you take into consideration and deduct the rebates that you are entitled to? A. The rebate on such transaction is so small it would hardly be considered.

1991 Q. As a matter of fact, when the coffee actually goes into consumption at the market the rebates are not considered at all, are they? A. No, they are too small to consider. On an ordinary small transaction they are too small to consider.

Q. So the benefit of the rebates then in cost and freight or "owner's account" is a perquisite that Hard & Rand absorb themselves, and that is the purpose, isn't it? A. It certainly is absorbed by them, yes.

Q. And they get sole advantage of it? A. Yes; I don't think they give any of it away.

1992 Q. At page 368 of the record you were interrogated for your reason for not accepting the Lloyd Brazileiro offer at a rate less than that of the conference lines and your answer was or your reason was for refusing the offer: "it was for personal business reasons of our own." Now, what were those personal business reasons? A. We were satisfied with the sailings that we had.

Q. Wasn't the real reason that you wanted to avail yourselves of the rebates under these conference agreements and that you did not want to imperil them? A. We could have shipped by the Lloyd Brazileiro without imperiling the rebates.

Q. But only under certain conditions affecting the rates, 1993
but where the rates were less, then what? A. I don't think we cared to ship at the rates they were offered at; we would rather ship by the other line at a higher rate.

Q. Was that the personal business reason that you had in mind? A. Yes.

Q. Nothing else? A. Not that I know of.

Q. Not the rebates? A. No.

Q. You are sure of that? A. I think not; I do not think the rebates entered into that at all.

Q. You have already testified, Mr. Waddell, that you 1994
were not personally familiar with the way that any of these respective conference lines, or the Lloyd Brazileiro, loaded the boats in Brazil, and that you had not personally inspected the difference in quality of the ships here, and you have already identified and the evidence now indicates quite a number of letters in which complaints were made about the method of loading, and the way the coffee was handled, and the way it was unloaded, and all that. What other advantage was it then that you could have possibly had in mind that you wanted to refuse this rate of the 1995
Lloyd Brazileiro although considerably less than the conference rates? A. We prefered the service which we had been using, which was satisfactory, and what defects there were we knew.

Q. It was satisfactory in spite of all these claims you made for damages? A. We made few claims comparatively, and it was satisfactory considering the amount of business we did with them.

Q. Had you ever shipped by the Lloyd Brazileiro within that time? A. Within what time?

Q. Within the period of these letters and these com- 1996
plaints which you had? A. No.

Q. Have you shipped by them at all from 1907 down to the present time? A. Not since then, I don't think, no.

Q. Of your own personal knowledge then you know nothing about how they themselves were handling their freight? A. Detailed knowledge; I have no detailed knowledge of the way they handle freight.

Q. Wasn't there another reason which you had in your mind, to wit, that the conference lines had refused to carry Arbuckle's coffee and, therefore, you wanted to confine

1997 yourself directly to the conference lines? A. I don't know what the reason was they refused to carry Arbuckle's coffee.

Q. Wasn't that one of the reasons, because they did refuse you would not accept the offer of the Lloyd Brazileiro? A. No, I think that would not enter into it at all.

Q. You don't think it did? A. No.

Q. Not to prolong this too far, I want to ask this one further general question: If you had no personal knowledge of the Lloyd Brazileiro service, how they loaded, the
1998 capacity of their ships, how they handled the cargoes, and how they unloaded them, and had not shipped over them, and you having more or less complaint against the conference lines during the same period for carelessness of various kinds, what business reason could you have had, or did you have, that you would not accept the lesser rate offered by Lloyd Brazileiro? A. Because we were satisfied with the good service they had given us for years and we did not wish to change.

Q. So much so that the good service by any other line,
1999 although at a less rate, was no inducement to you?

MR. KIRLIN: Uncertain service instead of good service.

Q. Do you understand that question? A. We were satisfied with the service we were getting and we thought the advantage offered was sufficient not to lead us to ship by any other line.

Q. Regardless of the rate offered? A. Regardless of the rate then offered, yes.

2000 Q. In 1907, Mr. Waddell, when these conference lines were acting independently, or not in conference, the rates on coffee were less than they have been since that time, have they not? A. I don't know that they were independent.

Q. Don't you know that in 1907 and part of the time in 1908 there was no agreement between these defendant lines, and that they were acting independently? A. I don't know at all.

Q. Didn't you know or hear that there was a so-called rate war, that they were in competition with each other and out bidding each other for traffic? A. From 1907 to 1908?

Q. In 1907? A. I don't remember any such thing as that in 1907, no. 2001

Q. Haven't you already shown that your coffee rates in 1907 were very much less than they were in 1908 and 1909; you remember that, don't you; you quoted rates here and produced a schedule of rates here for 1907 that were considerably less? A. I think they were less, but I would not know without looking the figures up.

Q. You would not know what caused it? A. No.

Q. Haven't you listened to Mr. Burlingham, here, speaking about the rate being lower in 1907? A. I was not listening to him. I am speaking of my own knowledge. 2002

Hearing adjourned to Friday, April 11th, 1913, at ten thirty o'clock a. m.

New York, April 11th, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner. 2003

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for Prince Line, et al.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles Burlingham, Esq., for Frederick T. Busk, et al.

MESSRS. SPOONER & COTTON, by George S. Franklin, Esq., for Paul Gotthiel, et al.

Mr. Franklin asks that the objections taken by the other counsel for defendants at the last session and at this session be received on behalf of the defendants represented by Messrs. Spooner & Cotton. 2004

JAMES WADDELL, recalled

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Waddell, you were asked to furnish rates paid on shipments to Europe in 1911 and 1912, have you got them? A. Yes, I have them here.

Q. What are they?

2005 MR. KIRLIN: I object to this on the grounds previously stated to this line of testimony.

A. Rebates on shipments from Brazil to Europe for the year ending August 31, 1911, $2,677.07.

Q. Is that the total? A. Yes, sir.

Q. From all the companies? A. From all the companies.

Q. Can you name the lines? A. Hamburg-South American Line, Hamburg-American, North German Lloyd.

Q. But you had not segregated to know how much you
2006 received from each one? A. Yes.

Q. Just state it? A. Shipments from Rio, Hamburg-South American Line, $153.21; Hamburg-American Line $137.92; North German Lloyd $135.88. Total on shipments made from Rio $427.01.

Shipments from Victoria: Hamburg-South American Line $8.61; from Santos, Hamburg-South American Line $844.34; Hamburg-American Line $389.49; North German Lloyd $1,047.02. Total from Santos $2,180.45.

Rebates on shipments from Brazil to Europe for the
2007 year ending August 31st, 1912: Shipments from Rio, Hamburg-South American Line $260.39; Hamburg-American Line $70.37. Total from Rio $330.76.

Shipments from Victoria, Hamburg-South American Line, $120.79; Hamburg-American Line, $51.80. Total from Victoria, $172.59.

Shipments from Santos, Hamburg-South American Line $775.44, Hamburg-American Line $431.82, North German Lloyd $1,037.30. Total from Santos $1,244.56.

Q. Making a general total for that year of——? A. $1,747.91.

2008 Q. For all the lines? A. Yes, for the year ending August 31st, 1912.

Q. Now, Mr. Waddell, you were asked in your former examination at page 268 of the record concerning an offer that had been made to the firm of Hard & Rand by the Lloyd Brazileiro here in the City of New York, do you recall that? A. I do.

Q. And you testified the offer was cabled by your office, your firm, direct to your representatives in Brazil? A. It was.

Q. And you were also asked whether you had upon file a copy of the cable which you sent? A. Yes.

Q. Now, have you produced here under your subpoena 2009
duces tecum the cable which you sent? A. I have; there are two cables there.

Q. I show you what purports to be two cables? A. Yes.

Q. Those are the two? A. Yes, those are the two.

MR. BALDWIN: I offer these in evidence.

MR. KIRLIN: The defendants object to the cables as immaterial, irrelevant and incompetent, not germane to any issue in this case.

MR. BALDWIN: You don't object to it on the ground that it is not the original cablegram that was actu- 2010
ally sent, do you? The question of incompetency might affect that, and meanwhile I will have it brought up here and produced.

THE WITNESS: Those are the actual translations of cables sent out. They were sent out in code.

MR. KIRLIN: We do not object on the ground that these are not the originals, otherwise the objection stands as stated.

Cablegrams marked Petitioner's Exhibits 201 and 202.

2011

Q. Exhibit 201 says "Have firm offer"; does firm mean ——? A. It means that offer will hold good until the time stated.

Q. The firm does not apply to a firm, but means, definite, specific? A. Yes.

Q. And the name "*Purus*" and "*Tapajoz,*" are those vessels of the Lloyd Brazileiro Line?

MR. KIRLIN: May it be understood that all questions in regard to these cables are subject to the same objection? 2012

MR. BALDWIN: Yes.

A. They are, so far as I know.

Q. I understood you to say this offer which you testified to on page 268 of the record, and to which these two cablegrams refer, was made here in New York? A. Yes.

Q. The Exhibit 202 starts "We refer to our No. 8"; does that No. 8 mean the cablegram, Exhibit 201? A. That was No. 8, yes. It was the date of it.

Q. It means Exhibit 201? A. Yes.

Q. After the word "Santos" there are words "to load

2013 Santos"; there are a number of proper names, for instance, "*Christian Knudsen,* Jan. 10th, *Tocantins,* Jan. 25th" and so on; did they refer to the names of vessels? A. Yes.

Q. Either owned or operated by the Lloyd Brazileiro? A. Yes.

Q. And the dates were the dates of loading? A. The times for loading at Santos.

Q. It says further "One week before all the above can probably charter"; what does that mean? A. It does not
2014 read quite that way, "Ready to load Rio one week before." That means ready to load at Rio one week before the date at Santos.

Q. Then, "Can probably charter if no engagement their own"; what does that mean? A. That we can probably charter their own regular boats.

Q. For full cargo? A. For full cargo, outside of any engagements of their own they may have.

Q. And at this net rate of 26 cents for full cargo? A. Yes.

2015 Q. 26 cents per bag? A. Yes.

Q. What does this mean: "Charters full cargo 24 cents net"? A. That is steamers that they have chartered, their own charters. Their own steamers they offer at 26, chartered steamers at 24.

Q. Did you receive any response from your Brazilian representative? A. Yes.

Q. To this cablegram? A. We did, yes.

Q. Where is it? A. We refuse to produce them because they have no bearing on the case, and it is information pri-
2016 vate and our own business.

Q. Were those responses included in the subpoena *duces tecum* served upon you? A. I understand not.

Q. Mr. Waddell, we will serve you with such a subpoena before you leave to-day. In any event, Mr. Waddell, did anything come of that offer? A. No.

Q. That is, you say the offer made by the Lloyd Brazileiro to Hard & Rand at those rates? A. Yes.

Q. Do you know what the rates were charged by the conference lines at the same time? A. The chartering rates?

Q. Both rates, the charge rates? A. We were paying at that time 50 cents and 5%.

Q. 50 a bag and 5% primage? A. Yes. 2017

Q. The reason why you did not accept? A. The reason why we preferred to stick to the lines that had given satisfactory service.

Q. And you have also testified that up to that time you had had no arrangement whatsoever with the Lloyd Brazileiro? A. No.

Q. That is, you never shipped over them? A. We made some shipments by them some years ago.

Q. But not within recent years? A. No.

Q. Is there any definite reason set forth in this answering cablegram which you received? A. Yes, I think you might call it a definite reason. 2018

Q. Until that is served upon you and you respond to the subpoena I cannot ask you any further questions upon them. I suppose with reference to the refusal to accept this offer at practically one-half per bag the rates that you were then paying to the conference lines, that you had no personal knowledge how the Lloyd Brazilerio loaded their boats, and how they unloaded them? A. I have no personal knowledge of that matter. 2019

Q. I think you have already testified that a number of the Lloyd Brazileiro boats were superior boats to some of the boats upon these conference lines? A. I don't think I said that. I think I said some of them might be as far as I know.

Q. Didn't you give the dimensions of some of them to show they were newer and larger? A. I don't remember the details of that.

Q. You do know generally some of them were newer and larger than some of these conference boats? A. Some of them were larger and newer than some of the conference boats, I know that. 2020

Q. Do you know that during that time prior and subsequent to the date of this offer the Lloyd Brazileiro were carrying coffee for other large importers here? A. I don't know.

Q. You know nothing about the Lloyd service of your own knowledge? A. I have had no occasion to look it up.

Q. And you have no knowledge of any change made by any of the shippers on the Lloyd Brazileiro as to the service? A. No.

2021 MR. BALDWIN: You are excused for the day.

MR. KIRLIN: We reserve our cross-examination until you have finished with the witness.

GEORGE I. HUGHES, called on behalf of the Petitioner, being first sworn, testified as follows.

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Hughes, where do you reside? A. In Elizabeth.

2022 Q. Your place of business is here in New York? A. Yes, 149 Broadway.

Q. What is your occupation? A. Traffic manager of the Singer Manufacturing Company.

Q. How long have you held that position? A. Since December 1st, 1909.

Q. Prior to 1909 and from 1907 to [illegible]hat was your business? A. I was connected with t[illegible] Bay Short Line.

Q. Who is G. M. Hughes? A [illegible]her.

2023 Q. And he is living? A. Yes.

Q. What is his occupation? A. He is president and general manager of the New Jersey, Indiana & Illinois Railroad.

Q. And what connection, if any, has he, or did he have, with the Singer Manufacturing Company? A. At what time?

Q. Since 1907? A. He simply was forwarder for the Singer Manufacturing Company.

Q. What do you mean by forwarder? It may be very

2024 plain to you, but we have to have it on the record? A. The Singer Company had export shipments as well as domestic shipments and he looked after the routing of those shipments.

MR. KIRLIN: Which?

THE WITNESS: Both, export and domestic.

Q. And he continued it down to what time? A. About December 1st, 1909.

Q. And after that the Singer Manufacturing Company attended to that direct through their regular employes, is that the idea? A. Yes, sir.

Q. Do you know Mr. Betts of Funch, Edye & Company, 2025
one of the defendants in this case? A. Yes.

Q. He is connected with what concern? A. He is with the Hamburg-South American.

Q. Do you know where his place of business is? A. Maritime Building.

Q. And number what? A. 8 and 10 Bridge Street, I believe.

Q. Did you have any talk with Mr. Betts the latter part of December, 1909, with reference to the shipments of the Singer Company to Brazilian ports? A. Yes.

Q. Do you know in what capacity he was with them? A. 2026
I never knew he had any title.

MR. KIRLIN: Is he a defendant?

Q. Where did you have that conversation? A. I cannot recall just where.

Q. It was in New York, wasn't it? A. Oh, yes, in New York.

Q. And at that time the Singer Manufacturing Company had a contract in form with the Lamport & Holt Company, 2027
that is Busk & Jevons, did they not? A. On certain business.

Q. On certain business to these South American ports, Brazilian ports? A. Yes.

Q. Is this that I now show you, Exhibit 100, a copy as you understand it of the contract then subsisting? A. Yes.

Q. Will you just state what this conversation was with Mr. Betts as near as you can recollect? A. As I recall it we had a contract with the Hamburg-South American Line on certain southern ports in Brazil and he asked if he could not make a contract covering the Rio and Santos business. 2028

Q. You mean shipments to those ports of the Singer Company's products from New York? A. Yes.

Q. And covered by this contract, Exhibit 100? A. Yes, sir.

Q. That is the contract that subsisted between the Singer Manufacturing Company and Busk & Jevons? A. Yes.

Q. Now, go ahead? A. Then as our relations with Funch, Edye & Company were very cordial they apparently tried to get us at reasonable rates——

Q. Don't state what they apparently did, but the conversation as nearly as you can give the substance of it? A.

2029 It is pretty hard to confine yourself to the exact conversation.

Q. Give your best recollection about what was said, or the substance of it? A. The substance was that he wanted to make a contract, to renew the contract with Busk & Daniels, although he wanted us to make the contract direct with his firm.

Q. I don't quite understand that, Mr. Hughes; explain that a little further.

MR. KIRLIN: We object to conversations about this
2030 contract; the contract speaks for itself.

MR. BALDWIN: This is about a new contract.

THE WITNESS: I understood that contract would expire in 1909.

Q. That is to say, this Exhibit 100? A. Yes. Does that expire 1910 or 1909?

Q. 1909. It reads "This contract to be continued after December 31, 1909, subject to the ninety days notice of withdrawal by either party, and such notice is not to be
2031 given prior to October 1st, 1909." This Mr. Betts wanted you to make a contract with Funch, Edye & Company to all points in Brazil including Santos and Rio, and to take the place of this contract subsisting between the Singer Company and Busk & Jevons, designated as Exhibit 100; wasn't that it? A. Yes.

Q. What reply did you make to that? A. We asked if he had authority to make that contract.

Q. Did you ask him that? A. Yes.

Q. And he said what? A. He said he certainly had; he
2032 confirmed it in writing.

Q. That is to say, he had authority to make a new contract which would supersede the contract that was then in existence? A. Yes.

MR. BURLINGHAM: Who said it?

MR. BALDWIN: Mr. Betts of Funch, Edye & Company.

Q. What response, if any, did you make to Mr. Betts? A. I said he could draw up a contract and we would sign it.

Q. I show you what purports to be a copy of a contract

signed by Mr. Betts under date of December 16th, 1910, 2033
Exhibit 160—— A. Yes.

Q. I notice this Exhibit 160 is signed by G. I. Hughes, traffic manager, Singer Manufacturing Company; that is yours, is it? A. Yes.

Q. And this contract then is to take the place of the contract theretofore subsisting between the Lamport & Holt Line, dated 12th December, 1908, and designated as Exhibit 100, is that right? A. Yes.

Q. Did you have any correspondence with Busk & Daniels, successors of Busk & Jevons about this contract? 2034
A. Yes, on January 23rd, 1911.

Q. I show you what purports to be a letter under date of 28th December, 1910, signed Busk & Daniels, and ask you if that is a letter which you received? A. Yes.

MR. BALDWIN: I offer this in evidence.
Marked Petitioner's Exhibit 203.

Q. Have you in your hand a copy of the letter to which this Exhibit is an answer, this dated 28th December? A. No, sir, we did not write them first. 2035

Q. Do you remember whether or not this letter, Exhibit 203, was in response to a letter or a telephone communication? A. It must have been telephone, because we did not write them until later; on their own initiative I guess as I recall it.

Q. This letter of Busk & Daniels, Exhibit 203, among other things, calls your attention to the fact that they consider that their contract still existed? A. Yes.

Q. Now, I show you a letter and a notice, two separate sheets, under date of January 20th, 1911, and ask you 2036
whether or not you sent any communication to Busk & Daniels, and if what I now hand you is a copy thereof? A. Yes, those letters are written by our company.

Q. You remember such letters, don't you? A. Yes.

MR. BALDWIN: I offer these in evidence.
Marked Petitioner's Exhibits 204 and 205.

Q. Mr. Hughes, I show you again Exhibit 100, being contract with Busk & Daniels of the 12th of December, 1908, and the letter of December 1909, Exhibit 100-a; you received that letter, did you not, in reference to that contract? A. Yes.

2037 Q. Was this letter written to you with reference to this contract extending it to include the shipments by the Prince and Hamburg-American Line steamers at this net rate of 16 cents per cubic foot upon any request of yours or of the Singer Manufacturing Company? A. No, sir, entirely voluntary on their part.

Q. In other words, they wanted that change made so it would comprehend those other two lines? A. Yes.

Q. It came from no suggestion or wish of yours? A. No, sir.

2038 Q. This contract, Exhibit 160, which you testified to was then made because of this misunderstanding growing out of the correspondence between you and the Singer Manufacturing Company on the one side and Busk & Daniels on the other with reference to their contract, Exhibit 100? A. Yes.

Q. It seems that this contract, Exhibit 160, is to run from January 1st, 1911, to December 31st, 1911, and continuously thereafter. Did Mr. Betts make any statement to you when that was made in that form, continuing this
2039 provision for continuation, as it is designated, with reference to his authority, if any, to make that contract binding upon all the conference lines? A. I asked him if he had authority to make that, and he said yes.

Q. Was anything further said about providing that if the Lamport & Holt Company for any reason should refuse to take your shipments what he would do? A. We could declare a shipment for that line and if they refused to take them at that rate they would protect us; no matter what rate was charged they would only charge us the actual
2040 contract rate.

Q. Since January 1st, 1910, down to the present time how had the shipments of the Singer Manufacturing Company been divided to the Brazilian ports? A. It depended on the sailings.

Q. Have they been divided between the three companies? A. Yes.

Q. That is to say, the Lamport & Holt Line, Prince Line and German Line? A. Yes.

Q. That does not apply, of course, to shipments made to other points not covered by this agreement? A. No, sir.

Q. I show you copy of letter of the 23rd of January, 1911,

signed "Busk & Daniels," presumably acknowledging your favor of January 20th, Exhibit 204, did you receive that letter of which that is a copy from Busk & Daniels? A. Yes, sir. 2041

MR. BALDWIN: I offer that in evidence.
Marked Petitioner's Exhibit 206.

CROSS-EXAMINATION by Mr. Burlingham:

Q. Who is it that signs these contracts G. T. Hughes? A. That is supposed to be an "I"; that is myself.

Q. Both Exhibit 160 and 161 are signed by you? A. After December 1st, 1909. 2042

Q. From that time on you carried on all the negotiations and signed all contracts for shipments to Brazil? A. Yes.

Q. And I see that the contract Exhibit 160, which Mr. Baldwin has called your attention to, runs from January 1st to December 31st, 1911, and continues thereafter subject to notice? A. Yes.

Q. But the later contract signed November 23rd, 1912, is for one year only? A. Yes.

Q. I suppose that was at your request because the rates were high and they might fall, is that it, higher in 1912 than they were the previous year, and you wish to limit your contract to one year, is that right? A. No, I don't think that is the reason. As I recall it they did not want to make it for any longer. I think it was at that time they wanted to make it for three or six months. We always liked to make yearly contracts. 2043

Q. So that you know what your freight rates are? Have them steady? A. Yes.

Q. And you have been dealing with these lines for how many years? A. Three years since I have had it. 2044

Q. And the company before that? A. I could not say. I suppose a good many years; ten or twelve years I suppose, but I cannot say that because I was not connected with Singer & Company at all.

CROSS-EXAMINATION by Mr. Kirlin:

Q. About what is the quantity shipped by the Singer Company to Brazil annually? A. I could not say. My office does not keep any record. I suppose the record is kept, but we are not supposed to keep those records and

2045 are not at all interested in them. I would only have to guess, and I would rather not guess.

Q. Are your shipments fairly regular throughout the year? A. Yes.

Q. You make shipments and desirable shipments on every sailing of the lines? A. Practically every sailing, yes.

Q. Can you give us a rough idea of the quantity shipped at a time? A. The number of cases? It is pretty hard to estimate the number of machines, because some machines
2046 are packed in two cases and some more.

Q. Do you take them by tonnage, by the terms of freight tons?

MR. BALDWIN: I object to his guessing.

A. I would be guessing.

MR. BALDWIN: I object to his guessing about this. If he knows then the question of its materiality is raised, but if he does not seem to know I submit he cannot guess.

2047 THE WITNESS: It is a matter of record. You can find it out probably easier than I could.

Q. I want to get an approximation from you?

MR. BALDWIN: I object as immaterial, irrelevant and incompetent.

THE COMMISSIONER: You may answer.

MR. MONTGOMERY: Per steamer?

MR. KIRLIN: Yes, per steamer.

MR. MONTGOMERY: You mean the average?

2048 MR. KIRLIN: Yes.

MR. MONTGOMERY: I don't see how the average can be material. Are you trying to show they shipped a certain minimum amount by each steamer or something of that kind?

MR. KIRLIN: I don't want to disclose all the inner workings of my mind.

THE WITNESS: It strikes me this can be gotten accurately and it is guessing; there is nothing to be concealed at all.

Q. Perhaps we will get it accurately later——

MR. BALDWIN: I submit upon this contention, Mr. Kirlin, it cannot possibly be proper. 2049

A. I should say from three to four hundred tons a steamer.

THE COMMISSIONER: Approximately?

THE WITNESS: Yes, approximately.

Q. Are your shipments to South America made in pursuance of contracts, advance contracts? A. Are you speaking about the steamship contracts? 2050

Q. No, contracts for the sale of the material and stuff? A. We ship to our own people in most every case. We ship to the Singer Sewing Machine Company.

Q. And you desire to have the shipments spread over the season in relatively small lots rather than to send large lots at once?

MR. BALDWIN: That I object to as immaterial and not responsive to any question asked upon direct.

A. Yes. 2051

Q. It is important for the conduct of your export business to have fairly regular and frequent sailings?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent.

A. Yes.

Q. And also that you should know in advance what your rates are going to be for the year?

MR. BALDWIN: Same objection. 2052

A. Well, of course—I suppose so; I am not positive of that; that is business. Whether it affected——

MR. BALDWIN: I ask to have it stricken out as a mere supposition.

Q. I understood you to say to Mr. Baldwin that you wanted to know what your rates were going to be over a relatively long period?

MR. BALDWIN: I did not ask the question, if you will excuse me.

2053 Q. You have had from the lines fairly regular and frequent sailings under these various contracts, have you not?

MR. BALDWIN: Same objection.

A. Yes.

Q. Satisfactory service?

MR. BALDWIN: Same objection.

A. Yes.

2054 Q. If you had not had satisfactory service I suppose you would not have renewed your contract?

MR. BALDWIN: I object to that as incompetent, immaterial and irrelevant and obviously asking for the state of mind of somebody else.

A. I should say we would have had to have done something, but just what I don't know.

Q. Before you renewed your contract from time to time did you make any independent enquiry to ascertain

2055 whether the rates which were being offered to you were fair and reasonable rates according to the state of the market?

MR. BALDWIN: Objected to as immaterial, irrelevant and incompetent and whether he did or not has nothing to do with this issue.

A. I don't think that matter was gone into, because it is pretty hard to compare sewing machines with other commodities.

2056 Q. At all events you were satisfied with the rates, otherwise you would not have signed the contract? A. There wasn't any alternative.

Q. It has been suggested here that there was an alternative line to ship coffee on; wasn't there an alternative line to ship sewing machines on?

MR. BALDWIN: Objected to as speculative, immaterial and incompetent.

A. I know we would like to have our shipments go at stated periods.

Q. About how often?

MR. BALDWIN: I make the further objection the contract speaks for itself and there is nothing as to what is in the minds of the contracting parties; outside of that it is not competent. 2057

A. At least twice a month.

Q. And that service you do get through the lines with whom you make the contracts?

MR. BALDWIN: Same objection.

A. Yes. 205

Q. Have you made any shipments by this rival line that is being featured in the coffee trade, the Lloyd Brazileiro?

MR. BALDWIN: I object to that as immaterial.

A. Not in the main. Of course, there are cases where we made shipments by the Lloyd Line, but they were not covered by the contract which we have.

Q. You have made shipments by the Lloyd Brazileiro? A. That is to ports not covered by the contract.

Q. To ports not covered by these contracts that are in evidence? A. Yes. 2059

Q. I suppose you made enquiries to ascertain whether the Lloyd Brazileiro could furnish the service at such intervals as you required the service when you made these various contracts, did you?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent, whether he did or not.

A. We did, yes.

Q. And you were satisfied they could not furnish the frequency of service that you desired? A. Yes. 2060

MR. BALDWIN: I object upon the further ground that the data with reference to the service would be the best evidence, and whether he was satisfied or not is immaterial. In any event the state of mind whatever it was was merged in this agreement.

Q. When you said the liberty to ship, which was accorded in these contracts, on other lines, that is, than the lines of the party who signed the contract, was voluntary on their part and wanted by them, that was not

2061 quite the whole of the fact, was it; you wanted it also, didn't you? A. I don't just understand that.

Q. Although you made your contract, did you not want liberty to ship by the other lines in order to get—— A. No, sir, not at that time. Contracts for the Brazil ports made with Funch, Edye & Company and the two ports of Brazil with Lamport & Holt, and at that time the service was all right; we were not complaining.

Q. Didn't you, under all your contracts with the Singer firm, make shipments by the other lines under them? A.
2062 No, I don't think we did. We lived up to the contracts.

Q. When your contract was with Busk & Jevons didn't you also make shipments with the Prince Line and the German Line? A. Yes, but not for the same ports.

Q. Busk & Jevons Line furnished sailings of sufficient frequency to those ports, did they? A. At that time, yes.

MR. BALDWIN: You mean to Rio and Santos?

THE WITNESS: Yes.

Q. Under these later contracts you have availed your-
2063 self of the liberty to ship on all the lines, haven't you? A. Yes.

Q. And are glad to have it? A. Yes.

MR. MONTGOMERY: You mean all the lines in the conference?

MR. KIRLIN: All the lines mentioned in the contracts.

Q. When you spoke of your shipments being divided amongst the different lines, you meant they were divided
2064 by you, of course? A. Yes.

Q. The Singer Manufacturing Company makes shipments to other foreign countries than Brazil, does it not? A. Yes.

Q. In large quantities? A. Yes.

Q. And have you noticed that the rates have gone up all over the world in the trades that you are engaged in during the last year and a half?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent.

A. In the last year, yes.

RE-DIRECT EXAMINATION by Mr. Baldwin: 2065

Q. Have you noticed whether or not in the last year or so, Mr. Hughes, there has been any competition to these Brazilian ports covered by this contract from other lines outside of the conference? A. Not sufficient to attract us, or that we felt that they had the service.

Q. In other words about all the carrying potential was in these three lines? A. Yes.

Q. Now, with reference to the three hundred to four hundred tons per steamer that you spoke of, that is a mere estimate upon your part without any data to justify it? A. 2066
Yes.

Q. It may be considerably less and it may be considerably more? A. Yes.

Q. You have no knowledge on the subject at first hand, have you? A. No, sir.

Q. You stated a moment ago in answer to Mr. Kirlin's question that you had noticed in the last year that the carrying rates all over the world had gone up; from whence did you get such information? A. Why, from our contracts with other lines to Europe and different points. 2067

Q. You mean to say these conference lines, they have raised all their rates, haven't they? A. Well, I did not mean to include them in that statement.

Q. You just simply noticed that they charged more? A. Yes.

Q. You have no knowledge of whether or not the actual cost of doing the work has gone up, have you? A. No.

Q. So far as you know it may be just an arbitrary rate? A. Yes.

2068

JOHN HENRY WINDELS, called on behalf of the Petitioner, being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

Q. Where do you reside? A. In Brooklyn.

Q. What is your business? A. Coffee.

Q. Connected with what firm? A. At present with Windels & Tyler, coffee brokers.

Q. How long have you been in business with that firm—

2069 you are a member of that firm I suppose? A. Yes, I am a member of that firm.

Q. How long have you been in business? A. Since March first.

Q. Prior to that time what was your occupation? A. I was with Leon Israel & Brothers.

Q. They had a place of business here in New York? A. They have.

Q. They are large importers of coffee? A. They are.

Q. From the coffee ports of Brazil? A. They are.

2070 Q. And they have been such importers for how long about? A. They have been importers since they have been in the coffee business, but they have imported from their own house in Brazil for four years.

Q. They have a house of their own in Brazil? A. They have.

Q. At what place? A. Santos.

Q. They export from Brazil to themselves here? A. Yes.

Q. And also to others? A. To others also.

Q. Have they been shippers upon the lines that we call
2071 conference lines, the Lamport & Holt Line, Prince Line and the German lines? A. Yes.

Q. Parties defendant in this action? A. Yes.

Q. And they have been shipping to your knowledge for how long? A. Four years. That is, I stated four years, I mean four calendar years up to the first of January just past.

Q. Were you ever connected with their firm in Brazil? A. I was manager there.

Q. For how long? A. Four years.

2072 MR. BURLINGHAM: Where was that, Santos?

THE WITNESS: Santos.

Q. How long have you been back? A. I arrived here February 5th, or about February 5th.

THE COMMISSIONER: This year?

THE WITNESS: This year.

Q. Then the four years you speak of were the four years preceding your arrival here? A. Four years ending with January 1st, 1913.

Q. They have been large shippers, have they not, from Brazil to this port? A. Moderately so.

Q. Do they ship to any other American ports? A. Yes, 2073
sir.

Q. Where? A. San Francisco.

Q. But not by these lines? A. No, these lines do not go there.

Q. During the four years you were there had Israel & Company been receiving any rebates from any of these conference lines? A. They have.

Q. Do they ship to New Orleans also? A. Also.

Q. Over these conference lines? A. Over these conference lines. 2074

Q. Did you ship to European ports? A. Yes, we did, and they still do.

Q. Did you receive rebates on those shipments to European ports? A. Yes.

Q. And have been receiving rebates on shipments both to American ports, that is to say, New York and New Orleans, as well as to European ports? A. To the European ports, yes.

Q. I show you Exhibit 123, purporting to be copy of "Supplementary Notice to Shippers From Santos," and 2075
on page 3, would you recognize a copy of a notice under which Israel & Company were operating, and under which they were making claims for rebates? A. Yes.

Q. Will you look at Exhibit 123 and state whether that is such? A. This is a supplementary notice; I have never seen it in this form.

Q. I show you then what purports to be another with the name of Israel at the bottom, and the substance of which, as I understand, is exactly the same; look at that and see if that is it? A. I have never seen it in that form. 2076

Q. Just look at it and state whether or not that is in substance a copy of a notice with reference to shipments and rebates under which Israel & Company operated for those four years, or any portion of the four years that you were there? A. This appears to be a copy, but it is not the form I have seen.

Q. But in substance, it is the same? A. It is.

Q. Then this Exhibit 123 that I show you, and which is already in evidence in this case, having been identied by McCreary and Mr. Waddell of Hard & Rand, is a supplementary notice to the shippers from Santos under

2077 which they operated, isn't it? A. This appears to be a copy of a form that I have seen.

Q. And under which you operated; it appears to be a copy? A. It appears to be a copy of that.

Q. Now, you notice the one which you identified here as Exhibit 123 is identified as a supplementary notice, and show you Exhibit 118, notice to shippers from Santos? A. This appears to be a copy of the original form.

Q. Of the original notice? A. Of the original notice.

Q. This appears to be dated 15th July, 1908; now, sub-
2078 sequently you remember of a supplementary notice which was sent to shippers? A. There was a supplementary notice.

Q. Is this a supplementary notice that I now show you, No. 124? A. This is a supplementary notice regarding European shipments.

Q. During this period of time did you receive rebates from the Royal Mail Steam Packet Company? A. We did.

Q. From the Hamburg-South American Dampschiff-ahrts-Gesellschaft, or some such name as that? A. We did.

2079 MR. KIRLIN: You mean rebates in Santos?

Q. This is Santos, Hamburg-American Line? A. We did.

Q. North-German Lloyd? A. We did.

Q. Lamport & Holt? A. Yes.

Q. And the Prince Line, Limited? A. We did from all of them.

Q. You made no shipments from Rio I suppose? A. We were not established there.

2080 Q. And those rebates were paid in pursuance to these notices, first a Notice to the Shipper, 118, and Supplemental Notices to Shippers From Santos, 124, through the American ports of which you think 123 is practically, in substance, a copy? A. Yes.

Q. And those rebates were being paid where? A. In Santos.

Q. And what was done with the rebates? A. Spent.

Q. I mean were they sent to the New York house? A. No, they were remitted to Europe in payment of moneys we owed them.

Q. At the direction of the home office here in New York? 2081
A. At my direction.

Q. But they were the rebates belonging to Leon Israel, weren't they? A. Yes.

Q. And they were the principals of the Santos office and you were only an employe? A. I was an employe.

Q. I suppose the information concerning the amount and what was done with them was forwarded in some form or other to the office here? A. They were. I will modify that statement, I am not sure whether they were or were not.

Q. Don't you think they were supposed to show what 2082
business they did and what the receipts were? A. We usually did.

Q. Do you remember whether or not any of these supplementary notices sent out by these lines from which you received rebates and which you have identified here were signed as approved by you down there for Israel? A. We never signed an agreement.

Q. Did you sign any of the supplementary notices to shippers? A. Never signed any agreement.

Q. How was that done; you simply received the notice 2083
and then—— A. We shipped on their vessels and they sent a copy of these notices to us.

Q. You confined your shipments, I suppose, entirely to those lines? A. We did.

Q. And in pursuance of these notices? A. We were operating under these notices.

Q. Do you know anything about any refusal to ship by any of these lines by shippers down there? A. Only by hearsay.

CROSS-EXAMINATION by Mr. Burlingham: 2084

Q. Those notices were printed, weren't they A. They were printed.

Q. And they were generally distributed through the Port of Santos to all coffee shippers? A. No. They sent us one copy. We opened our house there after these things were in effect.

Q. When you arrived in Santos to take care of this business as manager you found the rebate system in full operation there, didn't you? A. I did.

Q. And it continued while you were there? A. While I was there.

2085 Q. You had no objection to it, had you? A. Whether I had personally any objection to it?

Q. Yes? A. I had no objection to it.

Q. Did you find any advantages in the system aside from the personal advantage of getting a discount on the amount of freight payable by you?

MR. BALDWIN: I object as immaterial incompetent and, if there were, you are asking for a conclusion.

2086 A. I am not competent to judge as to that, because when I was there I only shipped while these were in existence.

Q. How long did you remain there? A. Four years.

Q. Until what date? A. I was not in Santos all the time.

Q. When did you leave Santos? A. I left January 13th or 14th, I am not sure as to the date.

Q. You were there in November last? A. I was.

Q. Was your firm one of the signers of a petition to the
2087 Brazilian Government to permit the rebate system to continue?

MR. BALDWIN: I object as immaterial, irrelevant and incompetent, not pertinent to any question asked on direct and entirely outside of any issue in this case, and also asking for a conclusion as to the contents of the petition. Whether it was or was not, the petition will show for itself.

Q. If you can remember after all that objection, please
2088 answer? A. To the best of my recollection we did not sign it.

Q. You saw it I suppose? A. I don't remember having seen it.

Q. Did you hear about it? A. I am not sure.

Q. Read it in the papers? A. No.

Q. Does it come as a complete surprise to you now? A. Not altogether.

Q. What is the source of your information on the subject? A. On freight?

Q. As to rebates? A. These notices which had been issued?

Q. I mean this petition to the Government.

MR. BALDWIN: I object, there is no evidence that 2089
there was such a petition.

MR. MONTGOMERY: It is an alleged petition.

Q. I am not asking about freight, I am asking about a petition to the Brazilian Government? A. My recollection is not clear on it.

Q. What lines sail from Santos to New York and New Orleans? A. Prince Line, Lamport & Holt Line and German Line, Lloyd Brazileiro.

Q. That is all? A. I believe that is all. 2090

Q. You ship by all of them or only by the first four? A. By the combined lines.

Q. What lines sail from Santos to Europe, the same? A. The same lines do not go to Europe.

Q. What lines go to Europe from Santos? A. The North German Lloyd, I believe the Hamburg-American, Royal Mail, two French Lines and I think three Italian lines, and two Austrian lines.

Q. Did you ship over those lines? A. Not all of them.

Q. By what ones? A. I am not sure, but we shipped very little to Mediterranean ports, and therefore we did 2091
not use the Italian and Spanish lines to any extent.

Q. The other lines you shipped by? A. I think so.

Q. As I understand it you obtained rebates under the same system on those shipments? A. We did.

CROSS-EXAMINATION by Mr. Kirlin:

Q. Did you prepare your applications for these rebates in Santos? A. We did.

Q. And delivered them to the agents of the lines there? A. The lines from time to time would receive them. 2092

Q. And got your money there? A. Yes. I would modify that, we received reimbursements in drafts on their home office. We did not receive the money.

Q. Was the house of Leon Israel & Company a registered house in Santos? A. They are registered in Santos by law.

Q. Who composed the firm? A. Leon Israel & Brothers —Leon Israel, A. C. Israel, and I believe Sam Israel. I say I think, I am not sure of the initials of his name, I think it is Sam—three partners.

Q. How did you manage the financing of the shipments

2093 you made to this country; did you draw drafts against them and negotiate them in the bank? A. When a sale was made our New York office acted as agents for the Santos office, and when they sold to others they gave us reimbursements on London bankers, which draft we sold to local banks in Santos.

Q. Were the firms in New York and Santos identical, or were they different partners? A. Identical.

Q. Separate concerns? A. One is the Santos house, a branch of the New York house.

2094 Q. Kept its own accounts? A. Kept its own accounts.

Q. Did its own financing? A. Entirely so.

Q. Just tell us what the machinery was of the getting paid on a particular shipment that you shipped from Santos to New York? A. We drew ninety days drafts on a London banker, took them to a Santos bank and sold them and obtained the cash for them.

Q. And the draft, I suppose, was accompanied by a bill of lading and insurance policy and invoice? A. Not always; generally so; it was not accompanied by insurance

2095 policies, insurance is done on this end.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. The other lines from Santos which you spoke of, the Italian lines and the French lines, you never shipped on those lines at all, did you? A. Yes, we did, but very little.

Q. Within a recent period at all? A. Within the last year.

Q. That was to Mediterranean ports? A. It was to

2096 Mediterranean ports.

Q. And not covered by these agreements under which you were getting rebates? A. That was a separate agreement.

Hearing adjourned to Tuesday, April 15th, 1913, at 11.00 o'clock A. M.

NEW YORK, April 15th, 1913.

Upon consent hearing adjourned to Wednesday, April 16th, 1913, at 2.00 P. M.

NEW YORK, April 16, 1913. 2097

Hearing resumed pursuant to adjournment.

APPEARANCES:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSSR. COVERS & KIRLIN, by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for the Prince Line, *et al.*

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles Burlingham, Esq. and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.* 2098

MESSRS. SPOONER & COTTON, by George S. Franklin, Esq., for Paul Gottheil, *et al.*

JOHN E. JOHNSON, JR., recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Waddell identified two cablegrams, Exhibits 201 and 202, and was asked to produce the answers. I show you what purports to be an answer dated January 14, 1913, 2099 is that the answer? A. Yes.

MR. BALDWIN: I offer it in evidence.

Marked Petitioner's Exhibit 207.

By Mr. Burlingham:

Q. Is that a correct copy of the petition to the Brazilian Government which your Company signed? (Showing witness paper.) A. My memory would not serve me in a case like that.

Q. Read it through. You read Portuguese, don't you? A. Yes. I don't remember it. 2100

Q. You wait until you have read it? A. As far as I recollect it that is correct. (After reading.)

MR. BURLINGHAM: I ask that it be marked for identification.

Marked Defendant's Exhibit 1 for identification.

(Mr. Burlingham will furnish English translation of this exhibit.)

Q. Is this a correct translation of it? (Showing witness paper.) A. I am not an expert on it.

2101 Q. Read it and see? A. It is not a literal translation. There are some things left out here.

By Mr. Baldwin:

Q. Mr. Johnson, the slips of printed paper of which this exhibit is a part appears to be cut from some newspaper, doesn't it? A. Apparently, yes. I can't tell where it comes from.

Q. And the matter which is marked and offered——

MR. KIRLIN: We have not offered the translation.

2102 He says it is not correct.

Q. Are you familiar with the newspaper publications in Rio? A. I read the daily papers as a rule, yes.

Q. And you can read Portuguese? A. As a rule I can, sometimes I can't.

Q. Is there anything about this paper I show you that indicates it is taken from some newspaper? A. I shall have to look at it again. (After examining paper.) I could not tell. The top is cut off.

2103 Q. You are not able to state whether or not this is a correct copy of any petition, or alleged petition, are you? A. As far as I can remember that is a correct copy of the petition as we signed it.

Q. As far as you recollect? A. As far as I recollect.

Q. How long has it been since you have seen the petition? A. When I signed it.

Q. When was that? A. I could not tell how long ago; several months ago. The date is on there.

Q. Do you know where the original petition is? A. It

2104 was circulated around; I don't know where it went to. It went to the Government I suppose.

Q. Circulated around by the steamship companies? A. I already testified that was my impression.

Q. Your impression is that this was gotten up by the steamship companies, that is to say, these conferences among others? A. That is my impression.

Q. Do you know where the original is? A. No, I do not.

MR. BURLINGHAM: He told you he thinks it is with the Government.

MR. BALDWIN: We do not offer it.

CROSS-EXAMINATION by Mr. Kirlin: 2105

Q. Do you know the official paper down there, what its name is? A. Diario Officiale.

MR. BALDWIN: It is assuming that there is an official and judicial paper.

Q. Is it one? A. The Diario Officiale publishes all the acts of the Government as far as I am aware; it is published every day.

Q. Is that the paper in which the official acts of the Government are published? A. Yes. 2106

MR. BALDWIN: I object to that. It is not shown he is qualified to make any statement on the subject. It would be a mere conclusion on his part, and I ask to have it stricken out on that same ground.

Q. Is there anything about that clipping which indicates to you whether it is a clipping from the Diario Officiale or not? 2107

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent, and asking for a mere guess.

MR. MONTGOMERY: He said he could not even tell if it was from a newspaper.

A. That is the typography of the Diario Officiale as far as I can recollect it. I mean to say that is the style of the printing; there are two columns about that width and about that style of type and about that length.

Q. What does the part of this printed matter which precedes the part marked for identification purport to be? 2108

MR. BALDWIN: I object to that as immaterial, irrelevant and purporting to be——

Q. What is it? A. It says on its face what it is.

Q. What is it?

MR. BALDWIN: If your purpose is to get that into evidence I object to it.

MR. KIRLIN: I asked what it purports to be, and it is obvious from that what it is is the next thing.

2109 Q. Doesn't it purport to be a debate in Congress? A. There is something missing here. I can't tell what it is. It is too fragmentary for me to say. I wouldn't want to say what it was.

Q. Are the signatures which are on the foot of it signatures of merchants, exporters?

MR. BALDWIN: I object on the ground that it has not been shown there are any signatures. There are some printed names.

2110 A. You mean to say are the names printed here exporters?

Q. Yes?

MR. BALDWIN: Object also on the ground that it is incompetent and immaterial.

A. The great majority of the names printed here are exporters of coffee from Rio.

Q. What are the others? Do you know what the capacities of the other gentlemen are whom you generally iden-
2111 tify as exporters of coffee from Rio?

MR. BALDWIN: Same objection.

A. What are their other capacities?

Q. No; you said you recognized the bulk of them as names of exporters of coffee. I asked what the business of the other signatories are? A. I don't know. Some of them I don't know.

Q. You said you thought or assumed that this petition was gotten up and circulated by the steamship companies;
2112 have you any real information about that? A. I said that was my assumption, yes.

Q. But it was actually signed by merchants, was it not? A. It was signed as far as I could judge. They brought a list of a whole lot of names and I put my name at the bottom.

MR. BALDWIN: Same objection to all of this.

Q. You would not have done it, would you, if you did not think it was true in principle?

MR. BALDWIN: Objected to as immaterial, irrele-

vant and incompetent what the paper shows, not 2113
here. It is the best evidence, its absence is not accounted for, and I think you have reached the conclusion of this guessing business.

A. I would not have signed that petition unless I thought well of its contents and wanted to back them up.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Are there any other papers published in Rio besides this one that you have mentioned? 2114

MR. BURLINGHAM: You mean two column papers?

Q. I asked the question? A. There are a great many papers published there.

Q. Quite a number? A. Yes.

Q. Do they have a different manner of printing; that is to say, spacing and width of columns and all that, or is it all the same? A. No, they have differences.

Q. Do you mean to say that this is the only one that has this width of printing? A. As far as I recollect there is 2115
none with as wide columns.

Q. As far as you know there may be? A. As far as any I have seen there is nothing with as wide a column as that. I do not read all the papers there.

Q. You don't know where this particular paper has been produced from, do you? A. I have no idea.

Q. And when you answered the question whether the paper you mentioned was an official paper or not you have no knowledge of whether it is official or not, do you? A. It has the Government's name on it, Diario Officiale. 2116

Q. You mean to say by that it is published under the auspices of the Government, or by a private concern? A. I think it is published by the Government printing office.

Q. You don't know about that, do you? A. I am quite certain it is.

Q. It was pretty generally understood down there, wasn't it, at the time that petition was circulated, that it had been gotten up by the carriers to circulate among the shippers? A. I think I answered that twice.

Q. Isn't that the general understanding down there? A. Yes, of course.

2117 Q. And all the contents of this alleged petition was gotten up by the carriers the same way as you understand it, the full context; in other words, it is entirely their work in getting it up? A. I could not answer that question.

Q. You did not help with it, did you? A. I helped by signing it.

Q. Now, Mr. Johnson, I asked you about the context of it? A. I had nothing to do with making up the context.

Q. The general understanding is that the entire context was gotten up by the carriers? A. That is my impression
2118 of it.

Q. Who was it that brought it to you, one of these carriers? A. I don't know. It was brought to my private office by one of the clerks. I don't know who brought it around; brought in by one of my employes.

By Mr. Kirlin:

Q. When you said there was no paper down there that had the spacing that wide you meant no other paper than the Diario Officiale I suppose? A. I don't know of any
2119 that has that spacing.

Q. Except that? A. Yes, except the Diario Officiale.

LORENZO DANIELS recalled.

DIRECT-EXAMINATION by Mr. Baldwin:

Q. Mr. Daniels, I show you Exhibit 35 for identification, being a letter to Messrs. Lamport & Holt by Busk & Jevons under date of 18th of July, 1907, is that a copy of
2120 the letter which you sent to them? A. I presume it is a copy.

MR. BALDWIN: I offer that in evidence.

MR. KIRLIN: The defendants Prince Line and German Lines object to this letter as immaterial and incompetent as far as they are concerned, and they also object to that part of it relating to the River Plate service as immaterial, irrelevant, being outside of the scope of the issues in this case.

MR. BURLINGHAM: We join in that objection.

Q. I show you a letter, Exhibit 37 for identification,

being letter of January 31st, 1908, to the Lamport & Holt 2121
Line, by Busk & Jevons, and ask you if that is a copy of a letter you sent? A. If that is copied from the book I accept it as a copy.

MR. BALDWIN: I offer the date, the title and the part of the second page that begins with the word "Hamburg-American Line" and ending with the word "ally" on the third page. I offer that part of the third page beginning at the bottom with the word "passengers" and ending in the middle of page four with the word "us." 2122

I offer that part on the sixth page beginning with the word "Tramway Company" and ending with the word "development" at the bottom.

I also offer that part on page seven beginning with the word "Linley & Co.," and ending with the word "claims" in the same paragraph.

And all of the eighth page beginning with the word "opposition" and ending with the signature. I offer that in evidence.

MR. KIRLIN: The Prince Line and German Lines 2123
object to this letter on the ground that it relates to matters anterior to the time fixed for the operation of the memorandum of agreement Exhibit 1 in the petition, and is immaterial and irrelevant.

MR. BURLINGHAM: We join in the objection.

Mr. Franklin on behalf of Mr. Spooner, asks that all objections taken by Mr. Kirlin or Mr. Burlingham be deemed as applying to his client.

Q. I understand from your previous testimony, Mr. 2124
Daniels, that at the date of this exhibit, 31st January, 1908, the present Conference Agreement between these various lines had not been entered into; that is as you understand it, isn't it? A. I think that is what the record will show.

Q. I show you Exhibit 38 for identification, dated the 19th of February, 1908, addressed to Lamport & Holt, signed Busk & Jevons, and ask you if that is a copy of a letter that you sent to your principals? A. If that is copied from our books I accept it.

Q. You accept that as being one? A. Yes, I accept it.

MR. BALDWIN: I offer so much of this exhibit, the

531

2125 caption, and on page three beginning with the words "Brazil Conference" and going down to the words "regular steamers" at the top of page four, and the signature.

Received as Exhibit 38.

Q, Mr. Daniels, have you got a copy of the cable which contained this information, or have you got the cable with reference to the Brazil conference that had been agreed upon. It says here, in paragraph three, that you cabled
2126 on the 15th instant that you thought that staples could be advanced at once to minimum rates, and so forth. Have you got a copy of that cable? A. I cannot answer off hand, but I think all of those cables have been filed with you.

Q. Will you have that searched for? A. We will see if we can find them, yes.

Q. You stated further in the paragraph as follows: "We have now agreed on working rates for staples as per enclosed list; other cargo tariff." Have you got a copy of
2127 that list? A. I don't recollect, unless it is given there. I shouldn't think so.

Q. It says definitely, Mr. Daniels, "As per enclosed list"; so that the list must have been made up? A. Yes, but I think all of those had been made up by Mr. Goodwin, who was secretary at the time.

Q. Do you think the conference would have it? A. Yes, sure they would.

Q. You don't think in your own office you would have a copy of it? A. I don't think so.

Q. Will you please search for that too, or cause search
2128 to be made? A. Yes.

Q. I show you Exhibit 42 for identification, a letter to Lamport & Holt by Busk & Jevons, of date August 27th, 1907 and ask you if that is a copy of a letter which you sent in the course of business? A. If this was taken from our records I accept it; I take it for granted it is a correct copy and I accept it as such.

MR. BALDWIN: I offer it in evidence.

MR. KIRLIN: The defendants Prince Line and German Lines object to this letter as immaterial and incompetent as far as they are concerned, and they also object to it as immaterial and irrelevant, being outside of the scope of the issues in this case

MR. BURLINGHAM: We join in that objection. 2129
Received as Exhibit 42.

Q. I show you letter of December 6th, 1907, Exhibit 46 for identification, addressed to Lamport & Holt by Busk & Jevons and ask you particularly if that is a copy of a letter which you sent to your principals in due course of business? A. I take it for granted it is a true copy and accept it as such.

MR. BALDWIN: I offer the caption and beginning on the first page with the word "Tennyson," and 2130
ending with the words "Day," on the third line from the bottom.

On page three, beginning with the word "advertising," and ending with the word "selves," in the same paragraph, and the signatures.

Received as Exhibit 46.

MR. KIRLIN: Defendants Prince Line and German Lines object to this letter as immaterial and incompetent as far as they are concerned, and they also object to it as immaterial and irrelevant, being out- 2131
side of the scope of the issues in this case.

MR. BURLINGHAM: We join in that objection.

Q. Mr. Daniels, do you know what that advertisement referred to which you allowed to remain there as a sort of a compliment to the old conditions?

MR. KIRLIN: I object to that on the same grounds.

A. The "Shipping Illustrated" was a young paper at that time and we put an advertisement in I should say 2132
largely out of compliment at the request of Mr. Seager.

Q. Had it anything to do with the way the line was held out as to its character, whether it was a common carrier or not? A. I do not quite follow your question, but the advertisement itself could be produced I presume.

Q. Have you a copy of it? A. We have not a copy.

Q. Do you know where one could be gotten? A. I guess one could be gotten from the files of the "Shipping Illustrated."

Q. Do you know whether or not about that time your company or your firm had gotten legal advice with refer-

2133 ence to the changing of the method of their advertisements so as to withdraw from their advertisements any statement to the effect that they were carriers for hire, or common carriers?

MR. KIRLIN: Same objection.

A. Now that you mention it, I believe some time in the past, I do not recall the instance, or the data, but somewhere in the correspondence you probably have found some such suggestion. I believe it was made, but I don't
2134 recall what it was exactly. If you refresh my memory with this actual instance, so many years ago, I will try to amplify it from what I can remember.

Q. Do you remember there was some sort of change under advice of counsel as to the form of advertisement? A. No, I think the suggestion came from the home office entirely as I recollect. It is very hazy in my mind.

Q. Now, Mr. Daniels, have you got a copy of a letter—or the original of a letter—of Lamport & Holt to your firm dated November 22nd, 1907? A. That I could not say with-
2135 out looking it up.

Q. That refers to liabilities of common carriers, and suggesting a change in the method of advertisement? A. I could not answer that without——

Q. Have you any recollection that some such correspondence passed between you? A. I have a dim recollection of some suggestion in regard to advertisements.

Q. Will you look that up or cause it to be looked up? A. What is the date?

Q. November 22, 1907. I show you Exhibit 57 for identi-
2136 fication, letter of July 30th, 1908, to Lamport & Holt from Busk & Jevons—I imagine it is Busk & Jevons, I haven't got the signature here—and ask you whether or not that is a letter which you sent? A. I take it for granted that is a copy and I accept it.

MR. BALDWIN: I offer all of the first page and down to "dangerous cargo" on second page. Beginning on the second page again with the words "We are putting into force," the balance of that page and all of the third page and all of the fourth page down to the words "River Plate," and the signature.

Marked Petitioner's Exhibit 57. 2137

I offer in evidence Exhibit 113 for identification, letter of July 25th, 1908. It has already been identified, and I will offer the caption and the last page beginning with the word "We" and ending with the word "Park" of the same paragraph.

Marked Petitioner's Exhibit 143.

Q. Mr. Daniels, I show you Exhibit 15 for identification, dated the 13th of March, 1912, to the National Cash Register Company; that is a letter you sent, is it? A. I take it 2138 for granted it is a copy and I accept it.

MR. BALDWIN: I offer this in evidence.

Received as Exhibit 15.

MR. BALDWIN: I offer in evidence letter from Lamport & Holt to Busk & Jevons marked Exhibit 102 for identification.

Received in evidence as Exhibit 102.

Q. Mr. Daniels, do you know whether or not the Prince Line, the Lamport & Holt Line and the German Lines paid 2139 rebates to importers here in New York during the year 1907, and during the year when these lines were not in conference? A. I am not able to answer that.

Q. You have been requested, have you not, to look up that data? A. Yes. I don't know where to turn for it.

Q. You don't know where to send for it? A. I don't know where to get it. We have no data in our office of those conditions from time to time.

Q. Not even of your own line? A. No.

Q. Now, Mr. Daniels, have you any data on your files or 2140 to which you can refer in order that you can ascertain definitely whether during 1907 the firm of Lamport & Holt paid any rebates, and if so, for what period? A. You mean inward or outward?

Q. Either one? A. I have no record or way of ascertaining it inward as we have no file nor record regarding those.

Q. Have you of the outward? A. The outward rebates, the letters you just showed me show they died a natural death somewhere in that period.

Q. That is the reason I asked the question originally, because the information here was that rebates were

2141 abandoned, at least on outward traffic, during the time of this alleged rate war between these different lines? A. One of the letters you just showed me this morning, or that I have seen today says that on account of the primage having been discontinued, the rebates as a natural sequence dies of itself, and asking for some instructions about it.

Q. Then, having seen that letter that you referred to a moment ago your impression now is that at least for a good portion of the time, or a portion of the time in 1907, rebates were abandoned by your line? A. There was a
2142 period where we formally sent out a circular abandoning them, but in the meantime they died a natural death by our abandoning the primage.

Q. In other words, when the primage was abandoned the rebates disappeared with it? A. Disappeared with it, and it all occurred during that period.

Q. I wish you would ascertain from your books or such data as you have got what there is about it, or when any rebates were paid by your line during 1907 or during the period of this competitive date between the conference lines, will you do that? A. You will see from my letter that there
2143 was confusion all through that period.

Q. Your books will show something about it, won't they? A. No, we did not pay the rebates here; we used to check up the outward rebates to agree with our manifests and they were all paid in London.

Q. And you would have no data, no letters? A. No data.

Q. No letters or books of account? A. Nothing; no accounts.

Q. Balance sheets or anything that will show? A. Nothing here that will give a record of the rebates.

2144 Q. Your London house would have it, wouldn't they? A. The London house must have them, yes.

Q. Will you make an effort to get that information from your Liverpool house? A. I shall be glad to ask for it, yes. I think we circularized them.

Q. I want to show the amount of rebates paid during that time that the competition existed between these conference lines? A. I think you will find it won't amount to anything.

Q. What I wish, Mr. Daniels, is a statement showing the amount of rebates paid by Busk & Jevons here in New York? A. We didn't pay any here in New York.

Q. Or by your Liverpool house to shippers on outward freight during this competitive time; that is to say, upon freight that was shipped during the competitive time from New York to Brazilian ports? A. I think it all died a natural death. 2145

Q. However, you will get that if you can? A. It is my impression it all died a natural death.

MR. KIRLIN: In other words, your impression is that there were not any.

THE WITNESS: My impression is that there weren't any, yes. 2146

Q. Have you been asked to furnish a statement from your records of rebates paid to other firms who shipped over your line here in New York from 1908 down to the present time? A. You mean outward rebates?

Q. No; this is from 1908 down to the present time? A. You mean inward rebates?

Q. Yes? A. I understand there were no records except what I filed with you from our books.

Q. That is to say, Hard & Rand are the only shippers that you have paid direct here in New York? A. I think they are the only ones that had payments direct here. 2147

Q. Have you gone into your books so that you can state that accurately? A. Yes, I think so.

Q. You have recently returned from abroad, have you not, Mr. Daniels, since your last examination? A. Yes.

Q. You were interrogated at one of your former examinations with reference to a cablegram that was sent by Mr. Kirlin to Mr. Knott at Newcastle as to the present existence of this conference agreement. Did you see Mr. Knott when you were over there? A. I did not see Mr. Knott, no, sir. 2148

Q. Did you ascertain while you were over there anything definite other than that cable, the answer to that cable, whether or not there is still a conference? A. I asked our managing director, Mr. Cook, how it came that there was a misunderstanding between myself and the Prince Line relative to the formal existence of Exhibit 1 in your petition here, which was the official record as you have mentioned between myself and Mr. Kirlin during the examination in Washington, and they told me they thought the misunderstanding was with the Prince Line; that the Prince Line had claimed in 1909 when the notice of cancellation,

2149 which is your Exhibit 3, was served, that that was a legal cancellation of all the agreements.

Q. That was only a cancellation of Exhibit 2, or only a cancellation of the pooling agreement; you would say that the Prince Line contended that the entire agreement as to traffic, and the number of sailings, and all that, and rates, was—— A. Cancelled them all, yes.

Q. And it was the opinion of the Lamport & Holt Line that that was not so, is that right? A. No, I think they just let the matter rest there; filed the Prince Line letters
2150 and let the matter rest. I will amplify that: in fact the Prince Line had written to the Lamport Line in Liverpool relative to the misunderstanding between Mr. Kirlin and myself at Washington, and the Lamport & Holt Line at Liverpool simply referred Mr. Knott to the letters that he wrote in 1909 acknowledging the formal notice, Exhibit 3, and calling his attention to the position he took at that time.

Q. This Exhibit 3 here provides definitely that the pooling agreement dated 8th July, 1908, and this is directed to the Hamburg-American Line and not to the Prince Line,
2151 between the German Lines and the Prince Line and yourselves—that would mean Lamport & Holt—that they gave notice under section 12 of the agreement to terminate it so far as the pooling agreement alone is concerned. Now, how do you account for the fact that either you or anybody else would take the stand under a definite notice, limited as it is, that the whole agreement was abrogated? A. I am not able to discuss the matter; I simply give you the facts of the case as they are on record.

Q. As a matter of fact ever since that time, with the
2152 exception of the pooling agreement, these lines have been acting under that agreement in conference, having their conferences here in New York, conferences in London, having the established number of sailings provided therein, substantially having the agreed rates fixed by the conference just as you have testified before, is that right? A. The general basis of the old agreement has been preserved.

Q. And has it obtained down to the present time and is it now? A. The general basis has been the basis of operation.

Q. And is to-day? A. And is to-day, yes.

Q. And the only thing that is not in operation is the 2153
pooling? A. No, I wouldn't say that, because the other agreements refer on the record of the matter of cost; they naturally affect the status of the agreement, but I do admit and have admitted as far as the present operation of the business has been carried on by the agents here it is the same as if the agreement was never cancelled or anything else.

Q. Exhibit 1, which provides for sailings outward and what you call the traffic agreement, you do not make any contention now that the agreement is not in force and 2154
effect and being operated under at the present time by all these conference lines who signed it? A. It is not formally in effect.

Q. Why not? A. Because, as I advised you; from the data I have given you.

Q. Where is there any written withdrawal by any one of the conference lines that Exhibit 1 attached to the petition is not now in effect? A. I cannot go into the legal side of it, but if you ask the Prince Line to produce copies of the letters possibly they may——

Q. You will notice that section 10, paragraph 10 of that 2155
agreement, provides it shall remain in force until the 31st day of December, 1913. Now, has any of the lines notified you or the Lamport & Holt Line that they withdrew from that agreement, or claiming a withdrawal? A. I just advised you that the Prince Line and the Lamport & Holt Line, they considered all the agreements cancelled.

Q. In what form did they come? A. They have a letter from the Prince Line.

Q. Have you got it? A. I have not, no, sir.

Q. And you are sure about that? A. I am quite sure 2156
about it, that I saw it.

Q. What was the date of that letter? A. About 1909; about the date of the Exhibit 3, the same date.

Q. In 1909? A. Well, it is the same date as that.

Q. If that is true how do you account for the fact that the Prince Line has been represented in each of these conferences you have been having here weekly? A. The Prince Line can speak for themselves; I am not going to speak for the Prince Line at all; they can speak for themselves.

Q. You state that you have seen a letter by the Prince Line to the Lamport & Holt Line that all of Agreement 1

2157 had been abrogated, is that the idea; you have seen a letter to that effect? A. My recollection of the letter was that they have terminated all agreements, or wording something like that.

Q. And they told you when you were abroad, that is to say, your Mr. Cook told you while you were abroad recently that it was the understanding of Lamport & Holt that the Prince Line had taken that position, is that it? A. They had the letter.

Q. And they showed it to you? A. Yes.

2158 Q. And you are sure it did not relate solely to the pooling agreement? A. I have testified as I understand it.

Q. You saw the cablegram that came back to Mr. Kirlin that was sent from the New Willard at Washington? A. Yes.

Q. To the effect that as far as they were aware—that is from the Prince Line—as far as they were aware the agreements had not been terminated except so far as the pooling agreement and rebate system downward was concerned; you saw that too, didn't you? A. Yes.

2159 Q. And you now say notwithstanding that cablegram there is a letter from the Prince Line to Lamport & Holt Line in existence in which they substantially say that all of the agreements have been terminated; is that right now, you are sure of that? A. That is what I have testified, yes.

Q. Will you get that letter? A. I think the Prince Line will give you that information.

Q. I want the letter that you saw, Mr. Daniels? A. I will ask them if they will give me a copy of it.

2160 Q. If you do not produce a copy of it we shall have to take testimony over there to get it, because I want to see it? A. I think they will produce it.

Q. Mr. Daniels, I wish you would furnish as soon as you are able a statement from your books showing the number of bags of coffee and the number of pounds of rubber and the amount of all the cargo from all Brazilian ports to New York during each year, the calendar years, 1908, 1909, 1910, 1911 and 1912 carried by the Lamport & Holt Line? A. Yes.

MR. BALDWIN: I offer in evidence now Exhibit 68 for identification.

Received in evidence as Exhibit 68.

CROSS-EXAMINATION by Mr. Burlingham: 2161

Q. How long have you been in business connected with the Brazil trade? A. 33 years, about.

Q. Always with Busk & Jevons and Busk & Daniels? A. Yes.

Q. Grew up in the office, you did, and then became a member of the firm? A. Yes.

Q. You are familiar with the conditions of the Brazil trade? A. Fairly so.

Q. And you have worked and your firm and its predecessors have been agents of the Lamport & Holt Line during 2162
that whole period? A. Yes, and for many years before.

Q. You are familiar with the Brazil trade, are you not? A. Yes.

Q. The cargoes that go from the United States to Brazil, are what sort, speaking generally? A. They are to-day very largely American products and manufactures and so forth.

Q. The coarser kinds of cargo? A. The bulk is the coarsest kind of cargo.

Q. And we import from Brazil what? A. Import coffee, 2163
cocoa, woods, sugar, hides, skins and nuts.

Q. Where does Brazil get her finer goods from? A. The largest percentage of fine goods comes from the countries of Europe.

Q. Generally speaking which class of goods pays the higher freight? A. The fine goods as we call them pay the tariff freight; generally slightly higher than the rates on staples or coarse goods.

Q. I do not mean to confine it to this tariff, but generally? A. That applies generally. 2164

Q. Will you tell us whether the trade between the United States and Brazil is developed to such an extent that full cargoes are shipped both ways. A. The growth of the business in a cycle of years has been very pronounced——

MR. BALDWIN: I think that is not responsive.

A. (Continuing.) Ten or more years ago when we started running to Brazil we ran but a very small service——

MR. BALDWIN: I object to that as not responsive.

2165 Q. Go ahead? A. (Continuing.) And the business has constantly developed until now there are several boats a week going practically with full cargoes.

MR. BALDWIN: I ask to have that stricken out as not responsive to the question, and on the further ground that he has already testified that he does not know anything about the incoming conditions, the conditions that obtain in Brazil.

MR. BURLINGHAM: He said nothing of the sort; he said he had not been in Brazil.

2166 MR. BALDWIN: Then you must have withdrawn your question.

MR. BURLINGHAM: I did withdraw the question.

Q. How large are the cargoes? A. The north bound cargoes, the coffee importations, have increased slightly, but not in the same proportion as outward cargoes.

MR. MONTGOMERY: Is this testimony supposed to be what Lamport & Holt is doing or what everybody is doing, or what?

2167 MR. BURLINGHAM: Everybody.

MR. MONTGOMERY: Then I submit there should be some showing as to his competency to testify as to what the cargo from Brazil is generally.

MR. BURLINGHAM: I thought I qualified him by showing that for 33 years he had been in the business.

MR. MONTGOMERY: But you did not show whether he knew anything about the incoming cargo or not.

THE WITNESS: I will take my chance against
2168 everybody here or all present as to what I know about the Brazil business. The shipments of sugar have practically fallen off in recent years, and the shipments of other cargoes are not so large. The north bound fleet of steamers, their space is only occupied about 50 per cent. of the space they have coming off for cargo.

MR. MONTGOMERY: You are still speaking about general cargo, all the trade?

MR. BURLINGHAM: Not all the trade, but Brazil and the United States; my question is as to Brazil conditions.

MR. BALDWIN: I want to put this objection, that 2169
the volume of trade on other lines than his own he can only know by hearsay, and that there are statistics devoted to those things which will be the best evidence, and he has not shown he has familiarized himself with what the other lines have been doing to qualify him to testify.

Q. Have you kept yourself acquainted with the volume and direction of trade between the United States and Brazil? A. I consider that I am, thoroughly. 2170

Q. For the last twenty-five years? A. For the last 25 years.

Q. Do you feel confident that you can speak with authority on the subject? A. I feel perfect confidence.

MR. BALDWIN: I submit he has absolutely not qualified himself.

Q. What did you say about 50% a moment ago? A. I said that the amount of tonnage coming into New York from Brazil carries barely 50% of cargo; 50% comes in 2171 empty.

Q. Have you any statistics on that subject? A. We have statistics of our own line, and the statistics that Mr. Gerhard published of the Prince Line, both of which I shall be very glad to tender.

Q. Have you them here? A. Yes. This is what I wrote and made up and put in myself, showing the freight carried in 1912, bags of coffee carried in 1912, by the Lamport & Holt Line steamers; the amount of coffee which steamers carried, capacity of the steamers and the vacant space that was not used, and I submit these statistics at 2172 your request, Mr. Burlingham; also the statistics of the Prince Line. That was only the coffee.

MR. MONTGOMERY: And the vacant space?

THE WITNESS: Vacant space available; came up empty.

THE COMMISSIONER: Available for other cargo?

THE WITNESS: Available for coffee or any other cargo; it came up empty.

MR. BURLINGHAM: I ask that these statistics which appear on page 978 of the Hearings before

2173 the Committee on The Merchant Marine and Fisheries, under date of February 8th, 1913 be taken into the record, beginning at the top of the page. I offer it in evidence.

MR. BALDWIN: This purports to be a statement of coffee brought from Brazil in 1912 by the Lamport & Holt Line, and it appears in the hearings before the Committee on the Merchant Marine and Fisheries of the House of Representatives. Now, the accuracy of it must be determined by him at
2174 least; I don't know whether I should accept it as it is offered there. If he knows about the accuracy of it, that is a different question.

Q. Were these statistics I called your attention to on page 1011 of that record made up by you? A. Made up in our office under my supervision.

Q. Are they correct? A. To the best of my knowledge they are correct.

Q. And it is a true copy of the statement you handed into the Committee of which Mr. Alexander was chair-
2175 man? A. Yes.

MR. BALDWIN: I don't see the materiality of that. I don't know that he has any knowledge. If he says it is correct I suppose he can say so, but I ask to have the latter part of it stricken out.

MR. BURLINGHAM: I am only trying particularly to show the condition of the trade.

Q. Does that truly represent the shipments of coffee in the year 1912 by your line from Brazil to New York, in the
2176 year 1912? A. It does, yes.

MR. BURLINGHAM: I ask to have it inserted in the minutes.

MR. BALDWIN: I object, not to its competency but to its materiality.

"COFFEE BROUGHT FROM BRAZIL TO NEW YORK BY LAMPORT & HOLT LINE STEAMERS DURING THE YEAR 1912. 2177

Date of Arrival	Steamer	Number of bags coffee	Capacity (bags)	Short of cargo (bags)	
Jan. 3	Verdi	16,879	20,000	3,121	
7	Terence	49,231	105,000	55,769	
Jan. 19	Sallust	69,797	75,000	5,203	
24	Tennyson	37,849	53,000	15,151	
Feb. 1	Tremont	20,972	120,000	99,028	
4	Vasari	12,701	50,000	37,299	2178
15	Titian	41,422	105,000	63,578	
15	Tripoli	59,984	120,000	60,016	
23	Byron	11,533	53,000	41,467	
Mar. 7	Voltaire	9,555	50,000	40,445	
7	Thespis	45,417	105,000	59,583	
Mar. 23	Tennyson	19,483	53,000	33,517	
30	Cavour	11,508	105,000	93,492	
Apr. 3	Verdi	17,576	20,000	2,424	
23	Byron	23,730	53,000	29,270	
May 5	Vasari	None	50,000	50,000	
6	Terence	49,421	105,000	55,579	2179
8	Canning	7,655	120,000	112,345	
24	Tennyson	22,968	53,000	30,032	
June 7	Voltaire	9,989	50,000	40,011	
19	Titian	30,932	105,000	74,068	
23	Byron	5,038	53,000	47,962	
27	Thespis	14,946	105,000	90,054	
July 3	Verdi	6,132	80,000	73,868	
9	Camoens	68,718	90,000	21,282	
27	Tennyson	7,650	53,000	45,350	
31	Cavour	79,961	105,000	25,039	2180
Aug. 5	Vasari	6,993	50,000	43,007	
25	Byron	14,218	53,000	38,782	
Sept. 2	Siddons	81,227	120,000	38,773	
5	Voltaire	4,224	50,000	45,776	
Oct. 5	Verdi	2,000	20,000	18,000	
7	Canning	69,038	120,000	50,962	
14	Tennyson	36,455	53,000	16,545	
29	Titian	71,812	105,000	33,188	
Nov. 1	Byron	2,133	53,000	50,867	
5	Vasari	9,356	50,000	40,644	
15	Camoens	64,478	90,000	25,522	

2181

Date of Arrival	Steamer	Number of bags coffee	Capacity (bags)	Short of cargo (bags)
Nov. 19	Vestris	10,860	40,000	29,140
Dec. 4	Cervantes	25,525	100,000	74,475
6	Voltaire	11,190	50,000	38,810
25	Thespis	78,630	105,000	26,370
		1,239,186	3,115,000	1,875,814

V. Steamers estimated Brazil space 50,000 bags.

2182 Q. You carry passengers too, of course? A. Yes.

Q. It is the only one of the conference lines that does, isn't it? A. No; the Hamburg-American Line carries passengers.

Q. How far developed is that business? A. Do you mean our own passenger business?

Q. Yes? A. We practically never go full. It is developing slowly.

Q. Are there more going out than coming back or the other way? A. I should say it was about even; the travel
2183 about even both ways.

Q. You were asked some questions on your examination by the Government with regard to steamers that you had added to your fleet for this trade? And you were asked particularly about certain steamers which were lost; did you fill the places of those steamers? A. We constantly are building tonnage to replace the loss of boats, and are putting on more tonnage every year.

Q. What do you do with your old boats? A. The old boats are broken up or sold as they become obsolete.

2184 Q. Mr. Daniels, you have operated under conference agreements and without conference agreements, have you, during this period? A. Yes.

Q. You have been asked several times about a rate war which existed I think in 1907; how long did that last?

MR. BALDWIN: Alleged rate war.

A. I think it ran from the middle of the summer until February of the following year, when the lines came together under different terms.

Q. What precipitated that war? A. The sale of the Union Line and their withdrawal from business and the

Hamburg-American, Hamburg-South American Line entering into the business without any agreement. 2185

Q. Was the Union Line a German Line? A. The Union Line I think was a German Line.

Q. Where was their home office? A. I think in Hamburg; I am not sure, but in Germany.

Q. And about what time was that sale to the Hamburg-American? A. It was sold sometime in 1907 is my recollection.

MR. BALDWIN: Was sold to the Hamburg-American? 2186

Q. Is it your information it was sold to the Hamburg? A. It is my information the boats in this trade were sold partly to the Hamburg-American and partly to the Hamburg-South American.

Q. Was the Prince Line engaged in the war also? A. They became involved necessarily.

Q. Were there three rivals or contestants in this rate war, or were there only two parties to it? A. I do not recollect very clearly, but I think the cutting of rates was 2187 inaugurated and maintained by the Hamburg-American and Hamburg-South American, and the lines in the trade necessarily followed to protect themselves.

Q. I mean were the Prince Line and Lamport & Holt associated in fighting the Hamburg-American? A. Nothing more than that they were in the trade.

Q. Did you have anything to do with forming this agreement, Exhibit 1? A. Nothing at all.

Q. Where was it affected? A. I think in London.

Q. And you were merely agents? A. Simply agents. 2188

Q. Instructed to carry it out? A. Under instructions.

Q. And did so to the best of your ability? A. Yes.

Q. And have done so ever since? A. Yes.

Q. Acting under orders? A. Yes.

Q. During this rate war what was the condition of things?

MR. BALDWIN: I object to that as immaterial, incompetent and irrelevant, and also too general and not within the scope; it calls for matters that may or may not be therein referred to.

2189 A. The rates went to a very unremunerative basis; business was conducted at a loss; and the object was to inflict as large a loss as possible on the opposing line.

MR. BALDWIN: I ask to have that stricken out on the ground that it is a mere conclusion of the witness, no data is given, and that the question itself is not pertinent to any question asked upon direct.

Q. Were you actively engaged in that warfare? A. To the best of my recollection.

2190 Q. Was any change made in the sailings at that time? A. I do not recollect about that.

Q. Was there any change in the amount of tonnage sent out by the different lines, was there more or less? A. I don't recall.

Q. What was the effect so far as the merchants were concerned?

MR. BALDWIN: I object to that; that is calling for a mere conclusion of the witness. He can only know by hearsay and as to the effect upon the merchants
2191 they would be the best ones to testify to it. And furthermore under the general objection it is not competent and material or pertinent to any question asked on direct.

A. I presume the merchants took advantage of the business conducted at a loss by the ship.

Q. Now, under the conference system sailings are regulated, there is an agreement as to rates, and the shippers who make contracts get the benefit of three services, do
2192 they not? A. Yes.

Q. From your experience in the trade what do you say as to the importance of regulating sailings from the point of view, not only of the ship owner, but of the shippers and merchants?

MR. BALDWIN: I object to that, because he can only testify as to what advantages he as a carrier thought that such conference meant to the carrier. He cannot testify as to what is in the minds of the others and how they regard it; it would be a mere conclusion and guess on his part.

MR. BURLINGHAM: If you will refer to his testi-

mony you will see the first question asked him by 2193
Mr. Montgomery was that his business was and he said a merchant, and he was then examined at considerable length as to what sort of a merchant he was, and he said that he was a general merchant and had been for fifteen years past, and exporting and importing a general range of staples and manufactured goods, hides and grain, oil, and almost everything, teas and coffees, everything in that line, as well as manufactured goods, dry goods, railway materials and manufactures, small manufactures. 2194

MR. BALDWIN: I still stand upon my objection. He can testify as to what effect it had upon him.

Q. (Question read) A. From the ship owners point of view in the development of any trade such as the trade between the United States and Brazil, it requires the definite allotment to that trade of certain of their ships for regular employment back and forth throughout twelve months of the year, and in working under an agreement with other interests that may be in the same field the waste of operation is largely overcome and the business is put on 2195
as economical a footing as is possible. The ships are allowed, instead of loading at the same time, to load at intervals, regular intervals, so that the going ships will get despatch and the ships following will also have the same advantage.

MR. BALDWIN: I want to put in one further objection. The advantage of the carrier is immaterial.

Q. Please go on. A. Furthermore all the trade require a large scope, the services at ports, and so forth; that one 2196
line is not able to furnish with satisfactory service to the trade unless other boats perform the onerous duties such as going to ports that are small and only require infrequent calls, other boats acting as express steamers for the main ports in making freight voyages as expeditiously as possible.

Q. How about out of the way ports? A. I think that comes under the same category; that would delay the steamers if they were bound for the main port and had to make an intermediate call. The trade has to be apportioned out and divided up after much careful consideration

2197 and study of the interests of the ship and the trade itself. From the shipper's standpoint——

MR. BALDWIN: I object again to that; he cannot state about the shipper excepting when he himself shipped. It is perfectly obvious he cannot speak for the state of mind of other people.

A. (Continuing.) Taking our own business, for example, and what our own shippers have told us in the business where we operate the tonnage, that the regularity of de-
2198 parture so that their goods can be ordered and be despatched and also certain understanding and assurance as to their delivery abroad; also the fact that the main ports being served by boats that make the voyage as quickly as possible without stopping at the small intermediate ports, and the standardization, so to speak, of rates, permitting the trade to figure on their freights. Most all the business is c. i. f. at the rates that they know are operative and which they can figure on ahead with the assurance of service and rates that they know are maintained to all the
2199 trade alike, so that the freight and the service become standard.

MR. BALDWIN: I ask to have stricken out anything stated to him by the shippers as being incompetent and hearsay.

Q. I suppose the exports from this country do not all come from the seaport, do they? A. They come from all parts of the country, California and the Pacific Coast, Canada.

2200 MR. KIRLIN: Middle States?

THE WITNESS: Middle States; the entire range of the country.

Q. Do you carry a great deal of machinery to Brazilian ports? A. Yes, we carry a good deal of it these days.

Q. What do you say as to the importance to merchants, manufacturers and shippers of regular sailings?

MR. BALDWIN: I object as calling for a conclusion, incompetent and immaterial.

A. They seem to be imperative, as the shipments of

machinery are goods that are necessary to conduct work that is probably in process, construction or operation; they generally pay a premium for the fastest boats to get it down there. 2201

Q. Is it not a fact that shipments of machinery often go forward in installments, some parts being forwarded by a later steamer?

MR. BALDWIN: Mr. Burlingham, a number of these questions of yours are purely leading. I think you ought to let him testify.

2202

Q. Is it a fact? A. Constructive machinery generally goes forward in detachments, so to speak, so as to keep up with the work.

Q. Under conditions which existed in the time of the rate war were sailings regulated so that the ships successively sailed on regular sailing days?

MR. BALDWIN: That calls for a conclusion and I object to it. State the fact.

A. I think the Lamport & Holt Line maintained their regular sailings, but I do not believe the other boats sailed regularly. 2203

MR. BALDWIN: I ask to have it stricken out what he thinks about the other lines.

Q. I observe that in answering my question you made some reference to the rates; what did you say as to the importance to shippers, merchants and manufacturers of stable rates, standardized rates, as you call them?

MR. BALDWIN: I object to that on the ground that it is immaterial, irrelevant and incompetent. He cannot testify as to how somebody else may regard a situation. 2204

A. In our own trade, where we are shipping merchandise we find that of the utmost importance, and our shippers in the Brazil trade, tell us that they are perfectly satisfied——

MR. BALDWIN: I object to him speaking of what the shippers told him. That cannot be competent evidence in any view of this case.

2205 Q. Finish it? A. And our shippers in the Brazil trade tell us that they are perfectly satisfied if our rates are standard and assured and without discrimination.

Q. Under the conference system and this agreement have they been stable? A. Yes.

Q. Has there been any discrimination?

MR. BALDWIN: Objected to as calling for a conclusion.

A. No, there has been no discrimination.

2206 Q. What do you say as to the reasonableness of the rates from here to Brazil on the conference lines during the last five years?

MR. BALDWIN: I object on the ground that he has not shown that he is competent to testify, and that he cannot give a conclusion unless he first states the facts constituting the cost of carrying and all the elements involved in it. There is no evidence here and he cannot give it.

2207 A. The freights that were earned by the steamers up to 1910 I think were not sufficient to make the business remunerative. The Hamburg-American, the Hamburg-South American and the Prince Line publish annually reports in which I think that fact is stated regarding the service——

MR. BALDWIN: I ask to have that stricken out about the other lines.

2208 Q. Go on? A. These are published reports and are records. As to our own line, our reports to the Corporation Tax Bureau will show that we operated at a loss.

Q. I have not asked you about whether they were remunerative or not; I have asked you whether they were reasonable. You have answered it in one way, but I should like to have you answer my question directly?

MR. BALDWIN: I object; that is immaterial whether they were reasonable or not.

A. I think they were very reasonable.

Q. What was the state of the freight market prior to 1910?

MR. BALDWIN: I object to that as calling for a conclusion and absolutely immaterial. There is no data here whatsoever upon which anybody can state a conclusion. 2209

A. It was very unremunerative to all tonnage employed.

Q. You said something about eight years when you were interrupted? A. They had for a period of eight years, previous to 1910, the freight markets throughout the world with very rare exceptions, had been below the cost of operation and all the companies were practically operating at a loss. 2210

Q. What kind of companies do you mean, regular lines? A. Some regular lines, and most all possible steamers.

Q. Since 1910 has there been a change?

MR. BALDWIN: Same objection.

A. In 1911 the freights all over the world advanced very materially.

Q. And has that continued to this date?

MR. BALDWIN: Same objection; no basis. 2211

A. The freights continued to advance and reached the highest figure in 1912.

Q. How are they now?

MR. BALDWIN: All subject to my general objection.

A. They are not quite so high as they were in the fall of 1912.

Q. On what is your knowledge of the freight markets of the world based? A. It is based on publications of freight contracts made by all the steamers. 2212

Q. How have you acquired your information, in the course of your business? A. In the daily course of the business; it is my business to keep track of the value of tonnage.

Q. What do you mean exactly by the "value of tonnage"? A. What is paid for the tonnage in the main ports and different parts of the world.

Q. You mean the chartering rates? A. Chartering rates, and the rates on the berth.

2213 Q. Have you at my request enquired specifically into this matter so that you can state with particularity what the changes have been in freight rates during the last few years?

MR. BALDWIN: Same objection.

A. I have here a list of the rates, 1909 to 1910, 1911 to 1912, that were paid in the fall of each year in the different trades.

MR. BALDWIN: You mean through Lamport & Holt.

2214 THE WITNESS: I mean the published brokers' records and newspapers generally.

MR. BALDWIN: I submit you cannot read from that, because it is not the best evidence and absolutely incompetent and immaterial.

THE WITNESS: If necessary I can give you the names of the steamers that took these charters, as they are all bona fide charters of freighting contracts with the steamers.

2215 Q. Are you a member of the Produce and Maritime Exchanges? A. Yes.

Q. Are these publications showing the state of the charter market in this port and in all other ports published here and in Europe which are acted on on the exchanges here?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent.

A. Yes, there are.

2216 Q. And you keep yourself familiar with the charter rates throughout the world, do you? A. More or less, yes.

Q. And particularly with regard to the trade from the United States? A. Yes.

Q. Is it necessary for you to do that both as agents for these steamships and also as a merchant? A. Yes.

Q. Is it not a fact that the charters are published here in New York very commonly? A. Yes.

Q. In the Journal of Commerce and in the Maritime Register cannot they be seen from week to week? A. Yes, and in the brokers' circulars, and so forth.

Q. Not quite with such particularity as the Stock Ex-

change report, but in substantially the same way, isn't that so? A. Yes. 2217

Q. And that is part of the business of every shipping man, I suppose, to keep himself posted on these things? A. Yes.

Q. And you have so kept yourself? A. Yes.

MR. BALDWIN: That is all under my objection.

Q. Tell us what the rates, charter rates, per ton were in this port in 1909, 1910, 1911 and 1912?

MR. BALDWIN: I object upon the ground that it appears that he has no legal source of information whatsoever. He made it up from publications that are not sufficient and cannot be competent from any point of view, and their accuracy has not been determined, and to make up a compilation from observation of newspaper reports and reports from exchanges are no evidence on which to base his conclusion. 2218

A. The figures that I will give you are those of actual charters made by one or two of our prominent brokers who were good enough to give me the figures. 2219

MR. BALDWIN: I submit again he has shown the evidence as incompetent.

A. In 1909 the charters were on the basis of two shillings six pence per ton.

Q. That is dead weight capacity? A. Dead weight capacity of the ships. Six months period. Two shillings seven and a half pence in 1910. Three shillings nine pence in 1911. Six shillings six pence in 1912. Trip charters two shillings nine pence in 1909; two shillings nine pence in 1910; four shillings in 1911; seven shillings six pence in 1912. The coal charters to Brazil, several of which we made ourselves, were fourteen shillings in 1909, fourteen shillings in 1910; eighteen shillings in 1911, and thirty shillings in 1912. Case oil charters, to the east, were 16c in 1909, 17c in 1910, 20c in 1911 and 30c in 1912. 2220

Q. Is that per case? A. Yes. Full cargoes of lumber to the River Plate were 92——

Q. How about to Brazil? A. We don't go there.

2221 Q. Then that would be merely an illustration of what the state of the market was? A. Yes.

Q. You may read it?

MR. BALDWIN: I object on the grounds urged heretofore.

A. 1909, 92 shillings 6 pence per standard.

Q. How much is a standard? A. 1980 superficial feet.

Q. How much is that equivalent to in cubic feet or tons? A. About 4 tons.

2222 Q. Go on? A. 1910, 92 shillings 6 pence; 1911, 122 shillings 6 pence; 1912, 190 shillings.

Q. Were all of those instances you gave in the Brazil trade except the last? A. Yes.

Q. How do those rates compare with the rates throughout the markets of the world?

MR. BALDWIN: I submit that he cannot testify; that there are no other rates of the world here for the purpose of comparison; it is a mere conclusion and cannot be competent on any ground. I may sug-
2223 gest this upon the record that what rates might have been to any ports for any given period of time can be ascertained accurately and they themselves are competent primary evidence, and then an expert may take those and state conclusions from them, but I submit without a basis he cannot testify how much he knows about the general average of the trade.

MR. BURLINGHAM: Will you consent that the trade reports shall be put in?

MR. BALDWIN: I have not seen them; they have
2224 not been produced here, but he cannot testify to it.

Q. (Question read)? A. The other markets show similar comparison and increases.

Q. You told us the freights of the conference lines from here to Brazil have gone up also, have they not, in the last few years? A. They have increased.

Q. In the same proportion as these, or less or more? A. They have not increased as fast as the open market.

MR. BALDWIN: I object because there is nothing here to show what the open market is; it is a comparison with nothing.

MR. BURLINGHAM: He has given the figures of the 2225
open market.

MR. BALDWIN: We would like to know what constitutes the open market.

Q. What part do the general charter rates play in the regulation of rates of liners?

MR. BALDWIN: Same objection, and immaterial, irrelevant and incompetent.

A. A certain portion of the tonnage that the liners em- 2226
ploy is usually chartered tonnage, and unless the rates are sufficient to cover the cost of charter tonnage they necessarily must show a loss every time that they make a charter.

Q. You were asked a good many questions by Mr. Baldwin with regard to tramps that sailed from Philadelphia and other ports, and I think you stated that there were in a certain period of a year or so about six which you had ascertained; will you explain how the entrance of so few tramps as that into a trade, or even fewer, can demoralize 2227
the market and freight rates?

MR. BALDWIN: There is nothing here to show it, if it did.

A. Any boat charterer, or any charterer employing a tramp that is put upon the berth from here to Brazil becomes at once a competitor with us, with the shippers, to secure their freight, and if they make low rates for the cargo those low rates——

Q. You mean low rates on the berth? A. Low rates for 2228
the shippers, the ship's cargo. It not only compels the lines to recognize the lower rates that are offering in the market, but in self protection to their friends in certain instances, as far as possible, to protect their own shippers' business as against shippers that might use the cheaper rates offered by tramps.

Q. If the lines should make exorbitant rates or unreasonable rates what would happen——

MR. BALDWIN: I object to that.

Q. So far as the tonnage is concerned? A. Shippers

2229 would at once go into the open market and charter these outside tramps, which are nothing more or less than taxicabs, that you can get for whistling for them.

MR. BALDWIN: I ask to strike it out what shippers would do.

Q. Do you refer to full cargoes now, what you state? A. No, not necessarily. It might be full cargoes or they might employ a broker to get together cargoes from several merchants to get a cargo.

2230 Q. A large shipper, of course, can take the whole of the ship for chartering purposes? A. Yes.

Q. But that is not true of a small shipper. How can a small shipper protect himself against exorbitant rates?

MR. BALDWIN: Objected to as immaterial and incompetent and a conclusion.

A. He goes to a speculating broker, points out the opportunity of chartering at a low rate against any high rate that might be asked, and this speculative broker will make

2231 contracts with shippers both large and small, charter a boat and load it for his own account.

Q. During this period since 1908 has the Lloyd Brazileiro been operating their line? A. Yes.

Q. When, if you remember, did they begin? A. I do not recall exactly, but I should think somewheres as far back as 1906 at least; possibly further back.

Q. Are they still operating? A. They are still operating.

Q. Can you tell us comparatively speaking what pro-

2232 portion of the shipments from New York to Brazil, Rio and other parts of Brazil, are carried by the Lloyd Brazileiro and what proportion by the conference lines? A. The proportion varies, of course, year by year; some years the Lloyd Brazileiro will carry I think at least 50 per cent. of the entire shipments.

MR. BALDWIN: Since 1908, is that right?

THE WITNESS: I don't recollect the year. I can look it up.

Q. Where can we get those figures? A. I could not say off hand.

MR. BALDWIN: I ask to have his testimony on that line stricken out. 2233

Q. Where did you get the figures from? A. My recollection that Funch, Edye & Company were interested to go into figures on one occasion, and their figures made up showed that fully 50 per cent. during that period was carried by the Lloyd.

MR. BALDWIN: I ask to have that stricken out because of what somebody else made up and what their figures showed. He cannot testify about it at all. 2234

Q. In answer to Mr. Baldwin's question you said that during the earlier part of the competition of the Lloyd Brazileiro you watched their cargoes very carefully, their shipments, and that you have not done so in recent years; explain that, will you, please? A. When they first became active we watched their boats rather carefully to see what results they were getting, but in later years and after they had been loading a good many years on the berths we began to know exactly what cargo they were getting and what shippers thought of them, and it was not necessary to get as close detail as when they first started. 2235

Q. How do their rates compare with conference rates? A. Their rates as a rule, quotations, are only a fraction below the quotations we made.

Q. Have you within the last five years—have the conference lines—ever put on any fighting ships so called? A. Not to my knowledge.

Q. Have you knowledge of conditions here in regard to that? A. No, we have had no fighting ships.

Q. So that it is a real competition, is it, between you and them? 2236

MR. BALDWIN: I object; that calls for a conclusion.

A. Active.

Q. How many are there on your mailing list of shippers —Lamport & Holt, I mean?

MR. BALDWIN: I object as immaterial.

A. I think about 800 shippers.

Q. How many bills of lading are there say on an average on the steamers that go out?

2237 MR. BALDWIN: Same objection.

A. We have two or three hundred shippers and 800 to 1,000 bills of lading.

Q. What do you say as to whether the service of the conference lines has been satisfactory to the shippers or not?

MR. BALDWIN: I object to that; the shippers themselves can state that.

2238 A. We understand that the service is on the whole satisfactory, and that they practically have no complaints of any moment.

MR. BALDWIN: I ask to have that stricken out.

Q. Attention has been called by counsel for the Government to certain complaints made by Hard & Rand; do you know of others? A. I know of no complaints further than just incident to local conditions, and those probably have been remedied after our attention has been called to them.

2239 Q. As I recall those were small matters, is that so?

MR. BALDWIN: I object as to what they are.

A. I think they were only detail matters.

MR. BALDWIN: I ask to have it all stricken out.

Q. Were they remedied? A. They were remedied, yes.

Q. Mr. Daniels, you have been speaking of the rates; I have been asking you about the rates from here; I want to ask you about the rates from Brazil to the United States.

2240 What do you say as to the reasonableness of those rates?

MR. BALDWIN: I object on the ground that there is absolutely no foundation here to determine reasonable rates, if it was an issue in this case. That there is nothing here by this witness or anybody else as to the cost of carrying, so that what is reasonable or unreasonable could be determined, and that he has no data nor offered any, on which he could base any conclusion.

Q. What do you say; answer, please? A. Last December I had occasion to make up a statement covering the com-

parative cost of transportation from Brazil to New York as compared to the costs at the same time for similar carriage to other parts of the world. I think I have it in the shape of statistics. 2241

Q. Did you make these up yourself? A. I made the statistics up personally, yes (referring to book shown the witness).

Q. Have you tried to work out what the cost per bag per mile of carriage was? A. I worked all that out in a paper that I read before the Coffee Roasters' Association in December last.

Q. Will you tell us what the cost of carrying a bag of coffee is per mile from Brazil to the United States? 2242

MR. BALDWIN: I object to that on the ground that the data has not been called for upon which he is asked to express an opinion.

MR. BURLINGHAM: I say this is a fact, and the conclusion can come afterwards.

MR. BALDWIN: And furthermore that it is immaterial, irrelevant and incompetent and no foundation laid whatsoever to draw any comparisons from.

2243

Q. The cost per bag per mile from Brazil to the United States now? A. The cost per bag figures at one one hundredth of a cent per bag per nautical mile.

Q. How did you arrive at that?

MR. BALDWIN: All subject to my objection.

A. The present rate is 50 cents and 5% per bag of 132 pounds; the mileage is about 5,000 miles, and that figures out at one one hundredth of a cent per bag per mile.

Q. Is that for your own line that you are speaking? A. That is for our own line or any line. 2244

Q. I notice you say 50 cents and 5%; what does that represent? A. That is the primage.

Q. How does that compare with the cost of transportation of coffee from Brazil say to London, Liverpool and Hamburg?

MR. BALDWIN: I object on the same ground heretofore urged.

A. At the same time the rate from Brazil to London,

2245 Liverpool and Hamburg was 45 shillings and 5 per cent. per thousand kilos, which worked out to one and one quarter one-hundredths of a cent per bag per nautical mile.

Q. What is the mileage? A. The mileage is 5500 miles.

Q. How is it to Havre from Brazil? A. From Havre the rate was 50 francs and 10 per cent. for 900 kilos; the nautical mileage was 5500 miles, and it worked out at one and one-third one hundredths of a cent per bag per mile.

Q. Is this primage of 5 per cent. confined to your line or the conference line? A. I think not, I think all the boats.

2246 Q. But I observe in the testimony again and again you have spoken of a 10 per cent. primage for Lamport & Holt; what does that represent? A. That is on the outward business from New York.

Q. Explain that will you? A. We are the only line, I think that charges the 10 per cent. additional, and we get that on the higher class of goods on account of the regularity and speed of the service.

Q. Your steamers are faster than the others? A. Our steamers are faster than the other boats.

2247

Hearing adjourned to Monday, April 21st, 1913, at 10.30 o'clock A. M.

New York, April 21st, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

2248 MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles Burlingham, Esq., for Frederick T. Busk, et al.

MESSRS. SPOONER & COTTON, by George H. Savage, Esq., for Paul Gotthiel, et al.

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for Prince Line, et al.

Mr. Savage asks that all objections made by counsel for the defendants present be considered as applying on behalf of the client Messrs. Spooner & Cotton.

LORENZO DANIELS recalled. 2249

CROSS-EXAMINATION continued by Mr. Burlingham:

Q. What are the various rates based on? A. The various rates are based on primarily the market value of tonnage.

Q. What do you mean by that, the market value of tonnage, the market rates? A. The market rates.

Q. Are there any standard publications which give the rates of tonnage, the charter rates of tonnage, published in this country or in England? There are several brokers' circulars published daily in this country that give the trade 2250
of the day before; also I should say the Journal of Commerce was considered a standard in the American market.

Q. And in the Journal of Commerce from day to day do the charters appear? A. They do.

Q. Is that regarded as a standard publication? A. I think it is so regarded.

MR. BALDWIN: Objected to as immaterial how it is regarded.

Q. What—do merchants and shippers rely on that as a 2251
standard publication?

MR. BALDWIN: Same objection.

A. I think they do.

Q. Is there any paper to which the Journal of Commerce corresponds in England, or which corresponds to it? A. Well, in England——

MR. BALDWIN: This is all subject to my objection, Mr. Burlingham; immaterial, irrelevant and incompetent. 2252

MR. BURLINGHAM: Yes.

A. In England the specialty papers referring to shipping are more prominent than they are in this country, and I should say the paper called "Fair Play" is considered the standard report of the market in all pertaining to shipping.

Q. Is that taken advantage of here, too? A. It is largely subscribed for on this side.

Q. You subscribe for it? A. We have it.

Q. And have for a good many years? A. Yes.

Q. The fact, Mr. Daniels,—what is the fact, Mr. Daniels,

2253 as to whether merchants and shipping people, ship owners and shippers, use these reports in these publications and rely on them in making their contracts, making bids, conducting their business, chartering and so forth? A. I think they rely on those in conjunction with the exchanges, the maritime exchanges, where the daily business is reported to guide them.

MR. BALDWIN: In addition to my objection I ask to have it stricken out as not competent or material.

2254 Q. The other day you gave some evidence as to the amount of business done by the Lloyd Brazileiro, and you have been asked on your cross-examination by the Government about the steamers not in conference sailing from this country; have you made an examination at my request as to the steamers that are outside the conference that are sailing, or advertised to sail, this current year to Brazil? A. I think I have such a list.

Q. Is this it? (Showing witness paper.) A. (After examination.) Yes, this appears to be a copy.

2255 Q. Does that correctly state the ships that have sailed to Brazil and are now advertised to sail for Brazil from here, from Atlantic ports, during the current year, from January 1st which are outside the conference lines? A. This is made up by one of the clerks in my office from data there and I think it is correct.

MR. BURLINGHAM: I offer it in evidence.

By MR. BALDWIN.

Q. Mr. Daniels, you did not make this up yourself? A. No, I asked one of the clerks in the office.

2256 Q. And the accuracy, of course, of it you cannot certainly vouch for, can you? A. Except that I am quite confident that the——

Q. No, personally you cannot vouch for it; you did not make it up? A. It was made up under my direction.

Q. You gave it to a careful clerk in your office, that is the best you can say for it, is it? A. From general knowledge I know that it is practically correct; the only thing is there might be one or two omissions there; there might be some more that he did not hunt up.

MR. BALDWIN: In view of the fact that the witness did not make it up, or supervise the making of it up,

and still thinks it may not be correct, we will have to object to it in that form as immaterial, irrelevant and incompetent, and its accuracy not at all shown here on the record. 2257

Mr. Burlingham: I will have it marked for identification and then we will bring the man here to prove it if you want.

Mr. Baldwin: As to the competency of it I will withdraw the objection and leave my objection stand as to the materiality, providing that either side can show the inaccuracy of it.

Marked Defendants' Exhibit 3 for identification. 2258

By Mr. Burlingham.

Q. Can you, refreshing your recollection by looking at this Exhibit 3, tell us whether those steamers have sailed from here since January 1st, or were advertised to sail; you might answer that question yes or no, if you can? A. Yes; to the best of my knowledge. I know the actual sailing and the advertising of the boats that are on this list. I only doubted whether there ought to be some more added to it, but I can verify that. 2259

Q. Then you say that is substantially correct, do you? A. Yes, that is what it is.

Q. Except that it may omit something? A. Yes.

Q. You said the other day that there was no discrimination shown or given by the conference lines in the matter of rates, is that true? A. That is true, to the best of my knowledge.

Q. What about contracts? You have spoken of contracts, a large number of which have been put in evidence by the Government; do you make any discrimination as to making contracts with shippers on the ground that they are small or large or any other ground? 2260

Mr. Baldwin: I object on the ground that it is immaterial, irrelevant and incompetent; the conclusions of the witness are not at all material.

Q. (Question read.) A. We make no discrimination. All shippers can have the same terms under contract.

Q. A good many questions were asked by counsel for the Government with regard to conversations that you had with members of the Arbuckle firm; will you now tell us

2261 what passed between you and Mr. Jamison, and the other representatives of Arbuckle Brothers, with regard to their position; perhaps first I will ask you whether you did business with them at one time in the matter of shipments to and from Brazil? A. The Lamport & Holt Line has done business with them in connection with their coffee shipments from Brazil covering a great many years.

Q. When did those relations cease? A. I should say eight or nine years ago; seven or eight years ago, somewheres thereabouts.

2262 Q. Have you sufficient knowledge, knowledge of your own, to say why they ceased?

MR. BALDWIN: I object to that as immaterial and irrelevant.

A. I understand that they withdrew because they could not get better terms than anybody else in the trade.

MR. BALDWIN: I ask to have that stricken out as stating the conclusion of the witness's mind, not competent and immaterial and irrelevant.

2263

Q. I ask you about your knowledge; if you were a party to any negotiations or had conversations with them then state it, but I don't want what you heard from somebody else? A. From my general knowledge I know that for many years Arbuckles were the largest importers, and many years ago the rebates were scaled in proportion to the shipments, all the rates were made in proportion to the shipments, and Arbuckles enjoyed the lowest rates. There came a time when other people——

2264 MR. BALDWIN: All subject to my objection.

A. (Continuing.) There came a time when one or two other shippers' shipments increased to nearly the same volume in a year as Arbuckles, and they claimed the same scale of rates. Arbuckles objected and it resulted in their withdrawing their business because others were receiving what was then the lowest rates which they for a number of years enjoyed exclusively.

Q. This was about nine years ago you say; eight or nine years ago? A. I cannot remember the exact date; it may be ten.

Q. When Arbuckles withdrew in this way what did they 2265
do for their shipments? A. They bought or built storehouses in Brazil so that they could store their coffee and make up full cargoes and charter tramps to bring these full cargoes to New York.

Q. And did they conduct their business in that way, bringing their cargoes of coffee in chartered tramps to New York from Brazil? A. Practically in that way, although they had shipped in the meantime by contractors; also a number of years ago they shipped by and have since been shipping under contract with the Lloyds for 2266
a number of years.

Q. The Lloyd Brazileiro? A. Yes.

Q. Some negotiations were opened between your firm and the Arbuckles, according to the direct testimony, looking to a renewal of business relations with Lamport & Holt and the conference lines; will you give a succinct statement of what passed between you, confining yourself to matters within your own knowledge?

MR. BALDWIN: You mean by that the conversation that took place? 2267

MR. BURLINGHAM: Yes.

MR. KIRLIN: And communications.

MR. BALDWIN: Yes. I don't want him to say "Of my own knowledge" certain things were done; he may say what each one said and what the substance of it was.

Q. Go ahead? A. Arbuckles at different times have made us offers for the carriage of their business. The instance you have reference to I suppose is about a couple of years 2268
ago?

Q. I think prior to that?

MR. BALDWIN: This is all subject to my objection but I want to add further that the witness is stating "Arbuckles" without stating who connected with Arbuckles he was in conversation with, or negotiations were had with, or any statement made, Arbuckles being a corporate name. We are entitled to know the person.

Q. I refer to an earlier time. The counsel for the Gov-

2269 ernmnt asked not only what passed in 1911, but what passed in 1909 or 1908, wasn't it?

MR. MONTGOMERY: There is some testimony in regard to 1909.

MR. BALDWIN: The first letter was in 1909.

Q. So I prefer you should begin in 1909.

MR. BALDWIN: I submit he is to state with whom he had the conversations so as we can get some correct idea. "Arbuckles" is simply a collective name.

2270 A. In 1909 I don't remember. I do not seem to recall anything unless you have something to refresh my memory. I have not looked it up, but do not recall it.

Q. You have looked over some of the Exhibits put in by the Government in regard to the Arbuckles, does that refresh your recollection as to what passed between you and any members of the Arbuckle firm in 1909—1908 or 1909? A. It only refreshes my memory to the extent of some general conversations.

2271 Q. With whom? A. They were off and on, starting with Mr. Jarvie, who was an active member of the firm, and then a Mr. O'Sullivan followed, then Mr. Jamison and later Mr. Humphrey.

Q. Were these all members of the firm of Arbuckle? A. I don't know whether Mr. O'Sullivan was an actual member; he was at the time in the management. I don't think Mr. Humphrey is an actual member, although he has charge of the management.

Q. Were Mr. Jarvie and Mr. Jamison members of the firm? A. Jarvie and Jamison were members of the firm.

2272 Q. And the other two, what position did they hold? A. They were managers; I don't konw what their actual inside connection with the firm is.

Q. Tell us to the best of your recollection your conversations with these gentlemen.

MR. BALDWIN: I think he ought to fix the time and give the particular people with whom he talked.

Q. Fix the time as nearly as you can, and give us the names of the persons with whom you had the conversations, and the substance of the conversations to the best of your recollection? A. I am afraid my recollection of that period is very indistinct and one blurs with another.

Q. What was the subject of the conversation? A. The 2273
subject was the matter of whether they were intending from the Brazil end to come back to some arrangement with the regular boats for transportation. The regular boats coming up.

Q. You mean the conference boats? A. Yes, that covers the conference boats.

Q. And what position did they take and what did you do?

MR. BALDWIN: I object to what position; what was said would be competent, not what position 2274
they took; that is a mere conclusion.

Q. What was said or what was the substance of what was said? A. We always extended the olive branch in the hope that they would come back and ship their coffee over our line.

MR. BALDWIN: I ask to have that stricken out as not competent and a mere conclusion of the witness.

A. That is an actual fact. 2275

Q. Did you offer the olive branch yourself in words? A. I personally was not authorized to offer anything more than an intermediary between here and Brazil, but I offered to forward it to the home office with every feeling that such was the attitude and feeling of the home office towards the business.

Q. And is this what you practically said to them, these different gentlemen, at the different times during that period? A. That is what we practically said to them, right along.

Q. What did each and every one of those members say 2276
to you in reply in 1908 and 1909? A. I am afraid I cannot remember those words. It is too far back.

Q. I don't ask you for the words, give the substance; I want to know what position they took up and in words? A. Their position consistently has been they wanted some advantage over all of the other shippers.

Q. What advantage did they ask for? A. In one instance it was the privilege of using all the regular boats when they wanted to, and the privilege to charter when they wanted to; their own privilege as against other people who used the conference lines.

2277 Q. Who said that of these four men? A. I think that Mr. Jamison and Mr. Humphrey both expressed themselves in practically those terms, if not those words.

Q. What did you reply? A. Our reply has been that we would—for reply we would pass them the cables and letters we had received from abroad.

Q. There are a number of cables that have been put in evidence from Busk & Jevons to Lamport & Holt in Liverpool; I find they speak for themselves, don't they? A. They do, I think.

2278 Q. And when you got the replies you showed them or communicated the substance of them to these gentlemen representing Arbuckles, did you? A. We did, yes.

Q. And what came of it all? A. Nothing.

Q. Were negotiations resumed in 1911? A. In 1911 Messrs. Arbuckle made us an offer for their business.

Q. Through whom? A. As I recollect the instance, at the request of Messrs. Jamison—I called at their office, met Mr. Jamison and Mr. Humphrey and their Rio manager, Mr. Gray.

2279 Q. Tell us what this conversation with you was as you best can from your memory? A. The conversation resulted——

Q. No, the substance of the conversation; what passed between you? A. I cannot recollect, except what it shows. I came right back to our office apparently and cabled an offer that Arbuckle made, consequently that must have been what they proposed to us as a result of my conference with them.

Mr. Baldwin: I ask to have stricken out the argu-
2280 mentative part.

Q. I want to know, if you can refresh your recollection from any documents you have at your hands, and tell us what the proposal by Arbuckles, the suggestion of Arbuckles was? A. Arbuckles offered to support the Lamport & Holt Line from Brazil, exclusive support on berth terms, that is, the same terms as every other shipper had, but they asked the privilege of asking the conference for full steamers for three ports, Santos, Rio and Victoria, of not less than 75,000 bags, not less than three weeks' notice; cargoes at 25c. net per bag.

Mr. Baldwin: Are you reading from something?

MR. BURLINGHAM: He is refreshing his recollection 2281
from something.

Q. What? A. Refreshing my recollection from a cable I sent after my seeing them.

Q. Explain those terms, the privilege of three ships, 75,000 bags? A. Arbuckles' offer meant that they would pay the same rate of freight, the same terms, the same conditions, that all other shippers were paying at the time, and going from Brazil for shipments of coffee by them they wanted the privilege of making up full cargoes from these 2282
ports of their own goods.

MR. KIRLIN: They wanted three ships to carry their own goods exclusively?

THE WITNESS: Not three ships.

Q. You mean three ships in all during the year? A. I think if my counsel will read over I didn't say anything about three ships; I said three ports, three weeks.

THE COMMISSIONER: As I understood you you said they asked the privilege of issuing from three ports 2283
at any time full cargo on three weeks' notice.

THE WITNESS: Yes.

THE COMMISSIONER: On three weeks' notice you were to reserve a full ship for them?

THE WITNESS: A full ship for them.

Q. What did you do then after they made that suggestion to you, communicate with Lamport & Holt? A. We passed on the suggestion as they made it to Lamport & Holt in Liverpool.

Q. And what was the result? A. The result was that we 2284
told Messrs. Arbuckle under instructions from Lamport & Holt that we could not agree to disturb the coffee trade for their particular business, and we would be very glad to have their business on the same terms as others patronizing us.

Q. Were any further negotiations had? A. That practically ended it.

Q. Now, I notice an exhibit, Petitioner's Exhibit 91, dated the 13th day of May, 1909, is a cablegram from Daniels to Cook and contains the following: "Jamison (Arbuckle Brothers) says they will test common carrier and

2285 other issues, both Brazil United States if necessary." What was the basis of that telegram from you to Mr. Cook? A. My recollection was that Mr. Jamison in conversation told us that unless we accepted their shipments on their terms that they proposed to test the standing before the courts of the American laws as it affected our refusal to give them anything except the terms we gave to others, and that they had seen the senior Senator from New York and asked him to secure such a proceeding for them.

Q. Who was the senior Senator then, Mr. Depew? A. I
2286 think it was Mr. Root, I am not sure.

Q. Do you know what sort of a proceeding he referred to? A. That the Government should try out the case against us.

Q. Was that prior to the Grand Jury investigation?

MR. BALDWIN: I object to the Grand Jury investigation; what has that got to do with it?

Q. What is your answer? A. That applied to the Grand Jury investigation.

2287 Q. Did I understand you correctly, Mr. Daniels, to say on your direct examination that the rates from here to Brazil were practically identical with those from Europe to Brazil? A. Yes.

Q. Your line, the Lamport & Holt, send ships, of course, direct from Liverpool to Rio, don't they? A. Yes.

Q. Have you any knowledge as to the cost of operation of your ships, Lamport & Holt ships, from New York to the Brazils, compared with the rates from Liverpool to the Brazils?

2288 MR. BALDWIN: That means yes or no, doesn't it?

Q. Have you any knowledge on that subject? A. Yes.

Q. What is the difference between the cost of operation——

MR. BALDWIN: Objected to as immaterial, irrelevant and incompetent. As I have stated before, it has nothing to do with the case, the comparison of rates.

MR. BURLINGHAM: It is not rates; it is cost of operation.

MR. BALDWIN: I mean the cost of operation, and

that we are entitled to have the data for both so 2289
that the Court can draw its own conclusion, the data that makes up cost. He cannot know what that is of his own knowledge, of any other person except his own company.

Q. Go ahead? A. I asked our Dock Department to abstract from the time wages paid on the boats running back to South America as against the boats that do not return.

Q. Make that a little clearer, please; back to South America from where? A. From New York as against the 2290
boats that do not return.

Q. Return from Brazil? A. Do not go back, that are in other trades across the Atlantic. The average wages for the sailors are about ten shillings a month higher than the European average; engineers and petty officers thirty to forty shillings a month higher; the cost of repairs and labor is from fifty to seventy-five per cent. higher than similar cost if done abroad; dry-docking about fifty per cent. higher; general stores and outfitting averages about ten per cent. higher.

Q. Is this confined as I understand it to Lamport & Holt 2291
boats? A. These are our own figures.

Q. The men sign on in England, don't they?

Mr. Baldwin: This is all subject to my objection.

Q. They sign the ships' articles in England, don't they? A. On the boats that run back and forth from here they sign on here.

Q. They sign before the consul here, do they? A. Yes.

Q. As I understand you the sailors wages are ten per cent. higher on these British ships when they sign on in 2292
New York than if they do the signing on in Liverpool? A. The average is ten shillings higher.

Q. A month? A. Ten shillings a month higher.

Q. And the comparison in regard to the engineers and the other items are based on the same prices and differences? A. Yes.

Q. But the rates you say are the same, the rates of freight are the same? A. The rates of freight are the same.

Q. Mr. Daniels, the Petition in this case alleges that the defendants, that is, your line and the German lines and

2293 Prince Line "Have acquired the power to fix arbitrary and unreasonable rates for the services rendered by them in said trade and commerce, and have endeavored to maintain rates at that artificial level at which said traffic may be made to yield the highest net returns to them." Is that true?

MR. BALDWIN: Objected to as asking for a conclusion.

Q. Have they acquired the power? A. They have not the
2294 power.

Q. To fix unreasonable and arbitrary rates? A. They have not the power to fix them and secure their payment. I doubt if they have the power to fix them even.

Q. What is the cure; what is the restraining influence, the factor that will prevent that, if you should desire to do it?

MR. BALDWIN: I object to that.

A. General—open market competition.

2295 Q. Are you subject to that open market competition? A. Constantly ruled and governed by it, controlled by it.

CROSS-EXAMINATION by Mr. Kirlin:

Q. Mr. Daniels, speaking as a merchant, are there any advantages, and if so what, in the development of trade by the furnishing of vessels for the services of minor ports in Brazil—that is, in ports which would not ordinarily be profitable for vessels to trade to.

2296 MR. BALDWIN: I object to that as immaterial, incompetent and irrelevant.

Q. If they were trading alone?

MR. BALDWIN: In any event he can only state his own views about it, and not what other merchants might think.

A. Unless the port is a small port and commands only a very limited amount of traffic it would be impossible for that port to do business with this country, unless facilities toward natural increases were furnished, and if these facil-

ities are furnished the business naturally takes advantage 2297
of the channel and naturally grows. If they were not furnished by this country and were furnished by another country the business would go entirely where the facilities existed.

Q. In other words, commerce is stimulated and aided by the increase of vessels for carrying it on? A. Most decidedly.

Q. What has the conference done for shippers in the way of improving the facilities, if any, between here and Brazil? 2298

MR. BALDWIN: All subject to my general objection, Mr. Kirlin?

MR. KIRLIN: Yes.

A. The conference is a co-partnership, so to speak, of lines that have recognized stability and responsibility, and working for developments, not of to-day but of the future, and the fact that such a combination or partnership between the lines assures the trade of regular facilities that will increase in proportion as the demands of the trade 2299
require it will be anticipated. That conference for the prospects of the future will develop the business that at the moment is not a profitable business. It all goes to give solidity and a guarantee for not only the business of to-day but of undertaking larger interests and larger risks for the future, and the association interests that command the confidence of the trade and of the public.

Q. Has the business to different ports in Brazil been increased; have the vessels for the different ports been increased through the medium of conference operations? 2300
A. The business has been developed; the business has grown and the shipping lines have increased their facilities always to the extent of the present business and a little in anticipation of business that would be developed.

Q. Has it been increased for ports, special ports? A. The larger ratio of business, of course, is at the larger ports.

Q. How about the business at the minor ports, has that been benefitted by the cooperation of either conference? A. I should say decidedly.

Q. Has it been increased to any extent that would have

2301 been impractical by individual operation? A. Yes, I should say that individual operation has been a great deal on the strength and the resources of the individual that takes it on; I mean to say that a small individual in a small line with small capital could not afford to take risks for the future, in a business that was practically open business and not safeguarded or protected, whereas a big company can afford to take such risks.

Q. Does cooperation through the medium of conference improve the service from the merchants' point of view by
2302 reason of offering rates more stable throughout the year than individual operation has a tendency to do? A. I think most decidedly so.

Q. What advantage is that to the trade? To the shipping trade as distinguished from the ship owning trade?

MR. BALDWIN: I simply want to urge my general objection here and add on the ground that he cannot possibly state what the shippers may think or how they regard it.

2303 A. Take our own position as shippers in the trade where similar conditions exist; we find that business is done very closely. There was always competition to get the connection away and if there is stability to the transportation why if their business can be taken on with a greater assurance of coming out of the way it looks at the day it is closed, whereas if there are alliances between individual shippers or lines that are running each independently, where each one had a special friend and generally a private arrangement, which is also the case when we are running at sixes and sevens, it unsettled the business so much
2304 that the merchants have no great mind to take the risk, especially if the merchant's shipment is a small one, because he never feels confident of what some of these unsettled conditions may bring forth and develop; it restricts and retards the confidence in the business.

Q. Is the export business to the Brazils done on a spot basis, or is it done on a forward arrangement; that is, arrangements made in advance of the date of shipment? A. Necessarily all the business is done somewhat in advance. A large proportion of it is sold for future shipment.

MR. BALDWIN: You mean stuff sold?

THE WITNESS: Merchandise that cannot be got

ready for going boats immediately; they are gen- 2305
erally sold for future shipments covering periods.

Q. And the South American trade as I understand it is wholly done on the basis of price, which includes cost and clearance—— A. Yes, almost all the expert trade is done on that basis.

Q. So that it is important for the merchants figuring in advance for shipments to be made subsequently to know what the freight rates are going to be in order to include that as an element in price? A. They have to know what 2306
the freight is going to be.

Q. Whether the rate is stable or not the merchant has got to make a rate which includes a freight rate? A. Yes.

Q. And, therefore, it is of advantage to know in advance what the freight rate is going to be? A. Yes, and who he is trading with.

Q. And that it aids him to know where the trade is being carried on through the medium of the conference and the stability of rates which you or the conference offers? A. Yes, sir.

Q. And where the operations are individual listing, not 2307
cooperative, can the merchant reasonably figuring in advance on a freight rate be sure, or reasonably sure, when his time comes for shipment he will be able to get the freight rate on which he has figured?

MR. BALDWIN: This is all under my objection.

A. No, I think the instances of running without conferences shows in nearly every instance that some big shipper has an advantage and is a friend of some particular interest in the trade. They become partners as against 2308
the other shipping interests in the trade.

Q. Having regard to classes of business, export business, that is done between here and South America, which includes I believe you said, equipment for railroads and waterplants and other public utilities, which involve considerable volume of business, are those ordinarily contracted for on a flat basis, that is, upon the basis of the rate which is to cover the whole series of shipments to be made under the contract? A. The rate of freight?

Q. Yes? A. Yes.

2309 MR. BALDWIN: You said South America, are you going beyond the Brazil port?

MR. KIRLIN: No, I mean Brazil; that is all we are concerned with.

Q. What advantage does the shipper of that kind of material which involves much more than a single individual shipment and much more than a ship load get from conference cooperation? A. They get the advantage of not only a definite contract showing the freight part is taken
2310 care of in the terms of their contract, protected, but they get the regularity of sailings, so that the goods can come forward by the railways as they generally gather them from all over the country, and the item of holding and carrying them preparatory to shipment is a large item in itself, and if they can economize by despatch it is a large saving to them. Furthermore the regularity of their departures and arrivals abroad give them the same facilities and to know that they can despatch their goods, and know when they can expect them, and they can handle their business on an economic basis. Take away these conditions
2311 and their expenses incident to a congestion at the point of shipment, or a congestion at the point of discharge, amounts to a very large amount of money, and one of the risks of the business otherwise.

Q. I take it from your answer that you consider one of the advantages of co-operation of the meeting, or conference, to merchants is that they get an opportunity of having material that they have contracted for maybe carried on the sailings of all the different lines as they come along instead of having to wait to have them taken on an individual line which would make, naturally, less frequent sail-
2312 ings? A. That is an advantage providing individual lines do not have frequent enough sailings.

Q. Now, if a conference and the co-operation which results from it were done away with, would there be as great opportunities for shipment by individual lines as afforded through the medium of conference?

MR. BALDWIN: I object to that as highly speculative; it cannot be competent or material from any standpoint.

A. Most decidedly not.

Q. Say why that would not be profitable; give the reasons 2313
for it? A. As shown in our trade where conference has not existed, or prior to the organization of conferences, it has been a gradual organization in a few years past. The service of the trade, that is, of the merchandise, the shipper requires facilities, frequent sailings, despatch and accommodation sailings to small ports, and to accomplish this service as a whole it is necessary for a single line to predominate, to practically furnish the United States, and, as I have said, in nearly all instances, it shows a preference to certain shippers who are particular friends, who have 2314
helped the lines to reach the position of offering very largely increased sailings and service. It really in the broad run operates through an individual channel; it can accomplish the same thing as at present is done by the conference interest or partnership interest.

Q. That is, the trade falls into individual hands instead of copartnership hands? A. Yes, by necessity, because the trade must have the facilities to grow and to prosper.

Q. Is this method of operation or co-operation, at least in this agreement 1, purely an arbitrary agreement, that is, for the purposes of particular trade, or is it merely an 2315
illustration of the method in which on the average trades everywhere are commonly known to be conducted?

MR. BALDWIN: I make the further addition to my general objection that the conference agreement set forth in the petition and other exhibits speak for themselves.

A. The conference agreement which is shown in the petition is similar to the conference agreements made in other ports as far as the general principle goes. 2316

Q. Are these conference arrangements matter of growth and development? A. They are matter of slow growth and development in the trade to meet the necessity that the trade has shown was necessary to be required to be made by its transportation interests.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Daniels, in answer to a question on the cost, you said that you were familiar with the Brazil trade and the kind of cargoes from the United States to Brazil; now, how much time have you spent in Brazil during all of these thirty-three years? A. Practically nothing.

2317 Q. I have understood you to say in your direct-examination that the rates on cargoes from Brazil to the United States and the contracts for cargoes from the United States to Brazil were all made by the Lamport & Holt Line agents in Brazil, and not by the Lamport & Holt agents here? A. All the contracts that apply to the Lamport & Holt Line, yes.

Q. And, therefore, all of the contracts for the cargoes or for freight coming from Brazilian ports to the United States since 1908 that have been carried over conference
2318 lines have been made directly with the conferee agent, or the representative conferee agent in Brazil and not in New York as you understand it? A. I am speaking of freight for my own line.

Q. You know about the other lines in the conference? A. I wish to be confined to what I know, if you don't mind.

Q. All of the information which you have with reference to the conditions that obtain and have obtained in Brazil since 1908 with reference to the necessity of the ships from Brazil you have obtained from some other source of information than from your direct knowledge of the facts, being
2319 on the ground, yes or no? A. We naturally see the Brazil shippers in New York——

MR. BALDWIN: I submit, Mr. Examiner, I am entitled to a categorical answer from him.

MR. BURLINGHAM: I submit that can be answered in some other way than yes or no.

MR. BALDWIN: He has already testified here as to what would naturally be advantageous or disadvantageous to shippers in Brazil. I want to know whether he comes by the knowledge directly or by
2320 heasay.

THE COMMISSIONER: I think he can answer that yes or no.

A. I have testified that I met Mr. Gray and Mr. Johnson here and another man. I meet them all as they come in on the line from Brazil. I have plenty of opportunity to hear them express their opinion not only directly but through other people, so I am familiar with the Brazil situation by direct contact with Brazil people.

THE COMMISSIONER: The question is as to the in-

formation you obtained on the ground, meaning in 2321
person?

THE WITNESS: I have never been in Brazil.

Q. Then you answer that by saying that you have no first hand evidence of your own from being on the ground investigating shipping conditions on the ground, upon which you have given your testimony upon the cross as to the advantages and disadvantages to shippers in Brazil? A. I think I am entitled to state that I have talked with all of these people that come up from Brazil, such 2322
as Mr. Gray of Arbuckles, and Hard & Rand's partners. If it comes to a technical question of being on the ground, that is for you to decide. I personally do come into personal contact with some of the Brazil people and get my impressions first hand.

Q. You have never made any original and first hand examination in Brazil as to the condition of the shippers in Brazil as to the necessities, have you? A. I have never been in Brazil.

Q. So that all the information that you had upon which 2323
you have predicated the advantage or disadvantage of shippers in Brazil you have obtained from a second-hand evidence, haven't you, and hearsay?

MR. BURLINGHAM: I object to that question. He has just explained it is not second-hand, but first class.

MR. BALDWIN: I say from hearsay.

Q. Is it or is it not? A. I don't think the question is a fair question. It demands an answer that is not correct. 2324

MR. BALDWIN: Mr. Commissioner, can this witness determine whether it is fair or not?

THE COMMISSIONER: I have no power to rule on that. I should say if you ask him where he derived his information that you would get a direct answer, and let the Court determine whether that is hearsay or not.

MR. BALDWIN: Have the question reread and see if I have not asked for the practical knowledge that he has.

2325 Q. (Question read.) Can you answer that or not? A. I do not consider such evidence all second hand evidence, by any means.

Q. Now, just state since 1908 any shippers in Brazil that had discussed with you the advantage or disadvantage of the conference or agreement between carriers where these various advantages that you have spoken of in your cross-examination were discussed? A. I don't recall any details amplifying the counsel's question.

Q. How many shippers from Brazil, giving names of any
2326 shippers from Brazil, since 1908 that you have discussed with the questions of any advantages arising to them out of the existing conference? A. I am not able to recall any special instance.

MR. BURLINGHAM: Did he testify at any time in the case that he had discussed the matter, Mr. Baldwin?

MR. BALDWIN: I don't have to put it that way, Mr. Kirlin, for the purpose of showing the benefit of conference, showing where certain things would
2327 grow out of conference. Now, in the question of conference he can state whether those advantages growing out of conference of which they——

Q. Now, Mr. Daniels, in what of the small ports in Brazil have the facilities been increased, the shipping facilities been increased, since 1908? A. I think that the entire range of ports south of Santos to Rio Grande do Sul have been given a regular service since that date. It may have been started about that date, but anyhow, recently, and I
2328 don't think the norther ports—our service I know has not been increased, because the ports apparently had what service they needed.

Q. As a matter of fact, hasn't the service decreased by the agreements between these lines since 1908? A. No, it has not.

Q. To any of the small ports? A. No.

Q. When you testified in answer to Mr. Kirlin's question the advantage to merchants who were shipping to small ports, you had in mind then merchants in the United States shipping to small ports in Brazil, is that it? A. Yes.

Q. In how many points south of Santos have they in- 2329
creased facilities? A. I should say the ports of Desterro, San Francisco do Sul, Paranagua, Rio Grande do Sul Santa Caterina.

Q. Is it not a fact that since this conference agreement the Hamburg Line only served those ports? A. No. I think other lines have served them.

Q. Now, I am not asking—since 1908, since this agreement, this conference, is it not a fact that the Hamburg Line alone serves those ports you have just mentioned? A. I think that we sent a boat through there several years ago, 2330
and I think the Prince Line sent a boat through, but I believe at present the boats have found the regular service of the Hamburg Line fortnightly or monthly, whatever it is, was ample for the requirements of the trade, and that has been the natural result.

Q. I ask you to be responsive to my question. I asked you if it is not a fact that since 1908 the Hamburg Line only served those ports. Now, if that is not true just state what other lines served them in conference? A. I am not able to keep track of the boats.

2331

Q. Are you prepared to say now that since 1908 the Lamport & Holt Line or the Prince Line, have served those ports? A. I am not able to state without reference. Our own service to the ports today is a fast shipment service, by mail steamers which is fortnightly and that was the occasion of our not sending our boats through, because we found we could make better service than sending an occasional boat through by making an arrangement for the trans-shipment at Rio to the coast line running down from there, their boats being smaller and being able to go into the docks at these ports, whereas our larger boats could 2332
not, and the whole working out of the thing looked rather more favorable for the handling of the business.

Q You mean for the Lamport & Holt Line? A. No, for the business itself.

Q. Now, Mr. Daniels, I want you from now on as near as you possibly can to make your answers responsive to my questions. You have able counsel here and it is not necessary for you to go into a lecture every time I ask you a question, and we will save time and I think a good deal of vexation if you will just confine yourself to my request. Now, the Lamport & Holt Line since 1908 has had no

2333 regular service direct from the United States ports to any of these ports south of Santos that you have just mentioned? A. I cannot remember the date that we stopped sending a boat, but we have not recently.

Q. Do you know whether or not the Prince Line has had any service, regular service, since the conference to those ports? A. I know they did send boats. When they stopped sending them I don't recollect the date.

Q. Isn't it a fact, Mr. Daniels, since 1908 you have had no regular service to those ports? A. Well, I personally
2334 don't think so, but the Prince Line can speak for themselves. I think there have been boats since then.

Q. Regular service? A. What do you mean by regular service?

Q. What do you mean by regular service? Rio or Santos regular ships going from here, too? A. Regular service of conference is one thing, but one every two or three months is not a regular service.

Q. I agree with you, that one boat every two or three months is not regular service; I am asking you for regular service; you have been testifying about complete knowledge
2335 of all this trade and it seems to me that you can state what regular service was? A. At the present time I think the German boats running there every month constitutes the only service that has been given.

Q. And that has been for many years, has it not? A. I think it has been for a few years. I don't think they are very far back.

Q. And it has been the result of—— A. I don't remember; I don't think it is very far back.

Q. Will you say it has been—that is, the Prince Line
2336 and the Lamport & Holt have had what even you could call regular service to those south ports since 1908; what is your best recollection about it? A. We have only had one or two boats all told going there; the boats are not suitable for that trade; they are too deep. But my understanding is that we can go there at any time.

MR. BALDWIN: I ask to have that stricken out as not responsive to any question. I asked nothing about what his understanding was about their right to resume; I am asking for facts.

Q. Now, during 1908, I mean prior to 1908, and during

what you call the rate war, did the Lamport & Holt Line 2337
serve those ports? A. I cannot recollect dates; I cannot testify to periods.

Q. Do you know whether the Prince Line served those ports? A. Again I cannot testify to what happened on particular dates so long ago.

Q. In looking up the question as to the advantage to shippers to what you call the smaller ports you did not consider it essential that you should determine the fact of whether during the time that you were actually in competition, that these various conference lines were then serving 2338
those ports, you did not consider it necessary to look that up, did you? A. No.

Q. What is this coast line that you spoke of that has served the Lamport & Holt Line to those south ports? A. What do you mean exactly, the name of the line?

Q. Yes, and what is it? A. It is a line of steamers running from Rio to these southern ports.

Q. Is it an independent line? A. Yes, an independent line.

Q. Was it in existence during 1907? A. I think so. I think it has been in existence for many years. 2339

Q. So that coast line was not created or initiated as a result of this conference in any way, was it? A. No.

Q. It is a line that anybody can take advantage of, any shipper? A. Yes.

Q. Now, what facilities, what increased facilities, now exist or have existed in 1908 that did not exist in 1907 to those south ports? A. Those south ports?

Q. Yes? A. The service to the south ports has been developed during those years and——

Q. I am asking you about facilities? A. And has been 2340
served by steamers in proportion to those developments.

Q. I repeat my question, what facilities, that is to say, what ships go there now that did not go there in 1907? A. I am not able to differentiate between the dates; I don't know what went there in 1907.

Q. Then if you state that the commerce would naturally be increased and stimulated by merchants having the advantage of increased facilities to these ports you mean to say that if they were increased commerce would be stimulated? A. If they are increased.

Q. Yes, if they are increased. Now, I ask you to defi-

2341 nately state what facilities to the shippers from United States to those ports is available that was not available to them in 1907 or during this period of competition? A. I cannot remember the situation in 1907, but I do know that the growth of the business has been steady and that the owners of ships—you will have to go over a fourteen foot bar to get into Rio Grande do Sul and it necessitates a very light draught ship. I know the character of the ships has been changed to conform to that class of business and that the facilities and that the business has
2342 steadily, possibly not rapidly, but steadily grown and been provided for.

Q. Now, Mr. Daniels, what ships of the conference lines have changed their draught so that the harbor facilities would be open to them since 1908 that were not in 1907, or during this period of competition? A. The steamer itself, cannot, of course, change its draught, but they can change the steamer, put another more suitable steamer into the trade.

Q. I meant what lines have changed the character of the boat? A. The boats that are now going down there are of
2343 a different character to-day than what they were a few years ago.

Q. That is to say, the boats of the Hamburg Line or the German Lines from the United States ports to those southern ports we are talking about have been changed? A. Yes.

Q. And are different than they were in 1907 during the rate war? A. Well, they have been changed in the same period; there has been a steady improvement; I cannot differentiate the dates.

2344 Q. Are you prepared to say upon the record that as far as the facility of entry and egress from those south ports for ships that go there under these conference lines is any better adapted to those particular ports than it was in 1907 or during this alleged rate war? A. It has been constantly improved, consequently it must be in a much better condition to-day than ever.

Q. Improved in what sense? A. I testified it has assumed a character of regularity, if not despatch, regularity in the number of calls and the classes of steamer than what existed there; more suitable for the trade.

Q. Mr. Daniels, you said a moment ago that there were

certain conditions of the entrance to the harbor there, and 2345
that that was one of the improvements that existed; I mean to say the kind of boats that go there so they could take advantage of those restrictions has been changed since 1907; now, what ones? A. I cannot differentiate; I don't remember what was listed in 1907, but I know it has been a constant growth and constant improvement.

Q. Has the draught of the boats decreased that are used there now? A. The boats that are put in the trade are of lighter draught, carry more on the draught, a more suitable boat.

2346

Q. Carry more on the draught, you mean to say carry a larger load according to the draught? A. Yes.

Q. Than they did in 1907? A. Well, I cannot remember what existed in 1907, but that has been the character of improvement in the trade.

Q. Now, what in 1907 was the character of improvement —that they didn't have in 1907? A. For that again I will have to refer to statistics.

Q. Have you looked up the statistics to find out? A. I have not.

Q. What statistics would be available to determine 2347
that? A. I think the German Lines will speak for themselves, if you want to examine them.

Q. I am speaking about statistics. You said statistics would show these things, I say what statistics, the names of the boats that have been put in the trade from time to time replacing others. You say that the business to these ports, what we call these south ports or southerly ports of Brazil, has been increased since this conference, I mean American ships to those south ports since 1908 has been increased? A. Yes.

2348

Q. Do you know what the rate of increase is? A. No, I have not looked it up in detail.

Q. Where did you get this information about the increase? A. General knowledge; from day to day knowledge.

Q. General knowledge might be somewhere in the pellucid air; what I want to know is where did you get this knowledge; what statistics did you examine, what records? A. It is very difficult to say where one gets the information when it comes naturally day by day.

Q. When it comes to testifying it is very hard to say

2349 where you get knowledge? A. Yes, very hard to put your finger on the exact spot in thirty years.

Q. Since you have been a witness in this case, what records, what public documents, what manifests, what of anything of a concrete nature have you examined so that you can say that the business to these ports has been increased since 1908? A. Again I have made no special examination; from general knowledge.

Q. Now, this general knowledge which you speak of then if it has not been obtained from records, publications, sta-
2350 tistics, data, it must have been obtained from some other source; now, what source? A. I cannot tell you. It has just been arrived at from day to day here and there in the natural course of business.

Q. Have you compared the business in one of the years, the outward manifests of any one of the years, with the other to know whether there has been any increase since 1908? A. I have not.

Q. So this general knowledge you speak of is not based on that kind of information, is it? A. No, my general knowledge is based on——

2351 Q. No, answer yes or no? A. Based on everything; tariffs are——

Q. Wait a moment now, we will see. You testified a moment ago that you had not examined anything——

MR. KIRLIN: Since he has been a witness.

Q. Since this suit has commenced, what documents or data of any kind have you examined for the purpose of arriving at any knowledge of a concrete nature as to whether
2352 or not the business to these south ports has increased since 1908? A. I didn't know I was expected to answer the question and I did not post myself.

Q. You did not post yourself, did you? A. I did not post myself on details.

Q. I will put the question again; having eliminated the examination of any records, documents, manifests or anything else of that nature for the purpose of ascertaining whether business has increased to those ports, what other source of information is open to you upon which you say you predicate this general knowledge? A. I do not state offhand that any of these various means of information

have not come under my attention during this period; they 2353
may have, but they have not come under my attention for a specific purpose and I do not recall them; but any general information that I naturally see in the conduct of the business, more or less of such statistics as you speak of may have come to my attention without making any particular impression on my mind. I do not make a denial that they have not, but I do not recall whether they have or whether they have not.

Q. But as far as the specific information contained in any such possible documents as I have mentioned, you do 2354
not recall that any of it left any impression on your mind so that you can now say that you got your information as to the increased business from such sources? A. No, not from any special source.

Q. Hasn't there been a general increase of business to all of the South American ports including these we have mentioned, by reason of the fact that the facilities such as harbor facilities and port facilities of various kinds, dockage facilities and all those things have greatly improved? A. I don't think that that has been. It is a small contribut- 2355
ing factor.

Q. Whether it is small or great it is true, is it not, that a great many improvements have been made there in recent years and did in a way facilitate traffic? A. They are all facilitating traffic.

Q. Do you know whether or not there has been a railway line that has been projected from Rio to Sao Paulo? A. I am not able to answer the question.

Q. From Rio Grande do Sul to Sao Paulo, do you know that? A. By general information I have heard of such a 2356
proposal.

Q. Do you know whether or not that the business to Sao Paulo has increased since that line has been projected because of those facilities? A. Well, I should think it naturally would, but I am not able to testify in detail.

Q. Now, you said under cross-examination that the merchants hesitate to take risks; I suppose you mean by that the risk of making contracts where there is an unsettled condition in the shipping trade; do you remember that? A. Yes sir.

Q. Do I state about what you said? A. I should consider your statement a statement of fact.

2357 Q. What unsettled conditions do you mean? A. I think you might summarize it as two unsettled conditions, a disturbance of one would be an unsettled condition of rates, a fluctuating condition of rates, and the second would be unprofitable competition. If you have a mind to put it that way, the lines by which they supported individual friends.

Q. You say that the rates, the staple rates would be less if these lines were in competition? A. If the lines were in competition the rates fluctuated very much wider; they
2358 would either go down to an extreme or they would recuperate to an extreme.

Q. Have you any instance during 1907 or during this period of alleged rate war where there was any such fluctuation of rates by which the shipper had to pay more than he has at any time since the conference was made up? A. I am not able to answer the question.

Q. As a matter of fact such fluctuations as occurred during that competitive period were fluctuations downward, weren't they? A. They might very well be.

2359 Q. And the shippers received the benefit of them, wouldn't they? A. Providing they could get the space at the time.

Q. Well, assuming that these conference lines were all honestly competing and, therefore, trying to make their service as available as possible to the shippers, wouldn't it be just as advantageous to the shippers here to have them in competition as far as the rates are concerned? A. I think not.

Q. That is to say, that if they were running the requisite
2360 number of boats to carry the trade that was offered each line in competition with the other, and endeavoring to get it, and the rates were lowered down to a competitive basis, that that would not be advantageous to the shippers? A. But you qualify your question by stating that they ran an ample service.

Q. I am assuming for the sake of the question that they were running ample service? A. The condition is impossible.

Q. You say it is impossible? A. It does not exist.

Q. No, it does not because of conferences; it never had a chance, Mr. Daniels, but in 1907 at least there was a ray of competitive light. Now, during that time will you say

how many less boats and in what respect the service was not as good and regular as it was since that time? A. I am not posted up on details to state positively a direct answer like that for a period so long ago, but it follows as a natural consequence when business is unprofitable in any trade no one wants to increase their facilities. 2361

Q. I am now assuming for the sake of the question that the competition had brought the rates down to a basis in which there was a fair profit; under those circumstances why wouldn't that be just as advantageous to the shippers as to have the lines in conference where they arbitrarily fix the rates? A. I know of no instance where competition of a keen kind has left a fair profit, consequently—— 2362

Q. I am asking you a question based upon an assumption of facts; you have already testified largely in cross-examination as to assumed facts; now, I am putting one in which there is an assumption of facts. Assuming those facts as I have stated, why would it not be just as much to the advantage of the shipper to have them in competition as it would be to have them in conference and arbitrarily fix rates? A. None of my past experience qualifies me to answer an assumed question of that character. 2363

Q. That is to say, although you have been thirty-three years exclusively in the shipping business either as a shipping merchant or as agent for a carrier, and with all your knowledge upon that subject, the period of 1907 known as the rate war period gives you no data upon which you can state that the rates during that period were not as advantageous to the shipper as they have been since? A. I will admit shippers, as I testified, appreciate low rates and will take advantage of anybody losing money, but the lines themselves were losing money and their business was decreasing; it was not a profitable business; they were public companies, who have public moneys invested in them, and they were not able to conduct a business or attempt a business that does not show a return on the bonds and money invested. 2364

Q. You say that during 1907 the rates were unprofitable. during the entire period of 1907? A. To the best of my knowledge and belief during all the period low rates were unprofitable.

Q. During 1907, during the time of the competition? A. Yes.

Q. Are you now prepared to state that during the com-

2365 petition period that the facilities available to the shippers have were not as advantageous as they have been since 1908?

MR. KIRLIN: Why don't you make the date specific? We claim it is competitive all the time.

A. I think that today's facilities are very much in excess of the facilities then.

Q. In what respect? A. In the frequency of the sailings, the despatch of the boats, the regularity.

2366 Q. Do I understand you to say that the number of boats available for shippers was decreased during that period? A. I cannot recall it without going into a lot of figures.

Q. Are you prepared to say that the number of sailings was decreased? A. During what period?

Q. During this competitive period? A. 1907 period you mean?

Q. Yes? A. It is a matter of data. Without the data I haven't it in my mind.

Q. Are you prepared to say that during that period the amount of cargo capacity available to the shippers was de-

2367 creased? A. Again without data I cannot make a definite statement; I haven't it in mind.

Q. Well, then, Mr. Daniels, if you haven't the data and haven't looked it up and therefore don't know it please state specifically what facilities during that period available to the shippers were abridged? A. Again I cannot tell you; I have no recollection on that point.

Q. Where did you get your information that most of the merchants here who shipped to the Brazilian ports make all their contracts for future delivery, or practically all?

2368 A. I know that most of the business comes in for orders that have to take time to fulfill them and they must necessarily secure their freight arrangements for the time that the goods are available, to say nothing of the making of orders that come in for periods two or three months in advance, or covering possibly a year.

Q. Do you mean to say that none of these merchants do a business which we might call a spot business; that is to say, that they ship from stock? A. Practically not; practically all has to be made. Flour goes from stock in small quantities.

Q. As a matter of fact don't flour shipments have to de-

pend on future date, that they always have in stock sufficient to supply the orders in the South American trade? A. Most always our boats are booked, and our booking are ahead rather than present. 2369

Q. What I want to ascertain is what the relation is between the booking ahead and to a merchant making his contract for delivery practically from stock? A. The merchant that gives an order to-day and ships it to-morrow will probably take advantage of this situation; but a merchant that was trading for a few months ahead must have confidence and reliance in the people he trades with, that their private contracts—— 2370

Q. That is to say, you mean the purchaser? A. No, the merchant that deals with the transportation people.

Q. During this competitive period wherein were the merchants in less favorable condition to make contracts in that way than he has been since? A. I cannot speak definitely regarding the fixed dates, because I am not posted myself, but I can state the general principles applying in a similar position.

Q. (Question read.) A. Well, speaking for ourselves, we would never take any future business that showed a very serious loss, commit ourselves to any period of time. for very unprofitable business. 2371

MR. BALDWIN: I ask to have it stricken out as not responsive.

Recess taken until two o'clock P. M.

AFTERNOON SESSION.

LORENZO DANIELS recalled. 2372

RE-DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Daniels, you stated this morning in answer to the question of Mr. Kirlin that the American merchants in making their contracts for the sale and delivery of their merchandise to purchasers or consignees in Brazil must necessarily include the freight rate, you remember that, don't you? A. Yes.

Q. And that meant the merchant must know there is to be a stability in rate, you remember testifying to that? A. Yes.

2373 Q. Don't these rates vary continuously? A. Yes.

Q. And since 1908 they have varied continuously so that changes in rates have been made frequently from time to time? A. Yes.

Q. Are the rates published? A. They are not.

Q. So then the merchant would not know what rate he would have to consider in making his contract unless he called up the office of one of these conferees and ascertained the rate at a given time? A. Yes.

Q. He would have to do that? A. Yes.

2374 Q. Then, if the rates vary and are being continually changed and he does not know what the rate is, in what sense would that condition constitute a stability that would inure to his benefit? A. When he calls up for a specific business he generally gets a refusal at a fixed rate during the time that the business is being negotiated by him. When he comes to stability of rate if it is an advanced market then naturally stability or else on the basis of the advancing market; they are not fluctuating violently one way or another; stability we consider the words to apply

2375 in business.

Q. Then the stability that you speak of is not in fact that the rates remain the same, or that he in advance will knows what they are to be for any period of time? A. No, I mean that he can appreciate that the stable rate means the same rate to all and will be handled on broad lines.

Q. You mean stable to include uniformity? A. Uniformity as well.

Q. But not stable as the rate changes? A. Not in itself; that, of course, varies.

Q. Would the merchants be in any more precarious con-

2376 dition if all of these lines are in conference or were not in conference, but competitors? A. I would consider then it would be a very unstable condition.

Q. You mean if they were in competition that the stability of the rates would mean that they would be unstable upward or downward? A. Did you ask in conference?

Q. If they were not in conference? A. They would fluctuate both ways, according to the situation.

Q. You mean to say that in your experience that in competition rates go up rather than down? A. No, not at all, the rates are governed by the value of tonnage in the open market to a certain extent.

Q. Aren't the rates that the merchant can make to ship 2377
his products or commodity governed by what would be the lowest rate that those in competition would offer? A. Not necessarily at all, because supposing the competition consists of a single boat, they would simply be looking after a single interest for the boat; they might sell two or three hundred tons of room at a very nominal price to fill and get away and not be able to offer any more room at all at that price; that would please the particular merchants who would happen to get it; in fact that is the position in which the rest of the trade would be placed, in a very disadvan- 2378
tageous position, because they would be discriminated against.

Q. You mean to say for example it would be like the early bird and would get the picking, that the other men would not be able to get it, is that it? A. Only limited picking.

Q. Now, assuming that these conference lines were in competition and running the same number of boats why wouldn't the same amount of space be available as if there would be no competition? A. I cannot answer such an assumed question because the condition does not exist.

Q. Since the condition don't exist by reason of the fact 2379
that all of these questions are arranged by the conference, the number of sailings, the number of boats, I am now asking you from the merchant's standpoint; you say it is necessary for him to take into consideration the stability in rates, that assuming that these lines were in competition and ran the same number of boats and having the same number of sailings, why would one person then be able better to ship, be able to practically absorb all of the available space; how would he be able to do it? A. Speaking entirely from a merchant's standpoint, such conditions very 2380
often happen where one man may try to corner the entire room, and naturally the rest of the merchants are prejudiced and suffer. There is no question about it that at certain times——

Q. Wait a minute; don't go into argument. Now then, your point is this, that if all these boats were in competition and had the same amount of space offered for sailing, and the same number of boats, and the same number of sailings, that some one person might practically corner all of the available space so that the balance of the merchants would not be able to avail themselves of it, is that it? A. I am not

2381 as good a theorizer as I am actually experienced, so I prefer not to testify on a hypothetical question.

Q. Let us go back to 1907, since you know more about that in theory; can you mention any one instance in 1907 when there was a cornering of the available space out of New York to the Brazilian ports?

MR. BURLINGHAM: You mean for one day, or a period?

MR. BALDWIN: For any day of sailing, or the period?

2382

A. I am not able to mention an actual fact from memory, but I know such attempts were tried whenever the opportunity occurred.

Q. When were they? A. I say I cannot recall.

Q. You mean to say that during the competitive period of 1907 that efforts were made to practically corner the available space offered on all of the competitive lines? A. I cannot answer such a general question. I do know that when——

Q. Now, answer my question; if you cannot answer it
2383 say so. Read the last answer. (Last answer read.) A. I do know that when a bargain in freights, that is, a specially cheap rate is offered, that a merchant is very apt to try to get control of the whole space to the detriment of other importers. It has happened time and time again.

Q. It happened during this competitive period? A. I cannot cite particular instances, but I assume it is naturally that.

Q. Then it is not a question that it did happen, but it presumably would happen, is that it? A. I know of in-
2384 stances where it has happened; whether it happened at that particular time I cannot remember.

Q. What other period of time was there when there was competition when this happened? A. I do not recall the particular time; I cannot put my finger on it.

Q. Do you know when there was any other competition time? A. Again I cannot answer definitely.

Q. Were any of these attempts that you are now unable to specify, or for any particular period, successful? A. No, because as a rule when things were so remunerative we would not sell a large block of room.

Q. Then it is where your line was operated where the

rate quoted in competition was low that they wanted to take the whole cargo space, is that it? A. Yes, we have had that. 2385

Q. And did at the same time the same shipper try to corral all the space on the other line? A. I am not able to answer the question.

Q. In any event, at the time they tried to corral all the space on your line you did not grant it, did you? A. No.

Q. And that was at a competitive period, wasn't it? A. Whether competitive or otherwise, whenever the rate was too low we refused business.

Q. In other words, these attempts to corral the available space outward bound, not only competitive times but in non-competitive times—— A. Whenever the rate was abnormally low. 2386

Q. So it is not any question of whether the fact that rates were not stable, but the attempts were also made when you claimed the rates were stable, that is by the conference? A. No.

Q. Otherwise uniform? A. Not necessarily; probably there was a special reason for having a special rate at the time to meet competition, or something like that. 2387

Q. Now, Mr. Daniels, you stated that sugar, the importation of sugar, has fallen off largely from Brazil to the United States? A. Yes.

Q. Do the Lamport & Holt Lines carry any sugar? A. We have not carried any for a long time in my recollection at the moment.

Q. You have not carried any since 1908, have you? A. I do not recall the details.

Q. The falling off in the importation of sugar has not affected your line? A. Except we have not had that to fall back on for cargo. 2388

Q. You have not had any importation whatsoever, have you, over your line since this conference was renewed in 1908? A. I don't think so. I think since 1907 we have had no sugar. That is qualified provided the facts are different, but that is my impression.

Q. I think you are right about that. Now, you spoke of one of the other articles imported from Brazil to the United States being rubber; does the Lamport & Holt Line carry large amounts of rubber from Brazilian ports to the United States? A. Comparatively speaking they are small lots; the rubber comes from the Amazon district.

2389 Q. You do not carry that, do you? A. We carry very little of it; about 300 tons a year.

Q. Do you know whether or not the other conference lines have been carrying any rubber from Brazilian ports to the United States I cannot speak——

Q. What is the general impression about it? A. I presume they have carried some.

Q. Do they carry sugar? A. They do, if any is available, but I presume there has been none available for them any more than for us.

2390 Q. You testified to having a pretty general idea about these conditions of trade between this country and Brazil; isn't it your general idea that none of the conference lines have been carrying either sugar or rubber to amount to anything since 1908? A. That is my impression.

Q. So that the cargo for all the conference lines between Brazil and the United States since 1908 is very largely coffee? A. Very largely.

Q. Are you able to state the ratio of the cargo, the whole amount of cargo, carried by the conference lines from 1908 down to the present time, that coffee bears? A. I

2391 am not.

Q. Is it somewhere in the neighborhood of 95%? A. I am not able to state. I have not gone into the figures.

Q. That being the most important item of importation and, therefore, the most important article upon which freight is collected, do you mean to say that you have never taken the time or opportunity to ascertain what ratio the importations of coffee bear to the total amount of tonnage? A. No, I have not gone into the actual figures.

2392 Q. In the different reports that you have made out and particularly in the reports with reference to the shortage and so forth, of your own ships coming in from Brazil, have you never considered what ratio coffee bore to the whole? A. I know it bears a very large ratio; exactly what percentage I have never figured.

Q. If I say it is somewhere in the neighborhood of 95% you won't dissent from that from your general knowledge? A. I would not dissent from any figures given by Mr. Baldwin.

Q. Now, assuming that coffee is the chief article or commodity that is imported from the Brazilian ports to the

United States, then the control of the carriage of this com- 2393
modity would substantially control the northbound traffic, wouldn't it? A. I could not answer that question.

Q. Can you state whether or not the value of this commodity has increased considerably since 1908? A. From my general knowledge the price of coffee is very much higher than it was a few years ago.

Q. Hasn't that been more or less discussed by the conference or freight agents, at various times, the fact that the price has advanced? A. I do not recall, or know of any reason for it doing so.

Q. There has been an increase in the rate per bag, 2394
hasn't there, since 1908? A. Yes, I think there has.

Q. And based very largely upon the fact that the value of coffee has increased too, wasn't it? A. I think it is based entirely on the value of tonnage.

Q. Wasn't the value of tonnage more or less affected by the fact that the value of coffee has increased? A. I don't think so, Mr. Baldwin.

Q. Do you say that it has never been discussed among the conferees that in as much as the value of coffee has increased it would stand an increase charge for carriage? 2395
A. No, I think the value of that— —

Q. Answer that question I asked you; has it ever been discussed? A. Not to my knowledge.

Q. Has what you call the value of tonnage decreased in the last few months? A. I don't think the open market is quite as high as it was.

Q. Do you know what it was in 1912? A. The value of tonnage?

Q. Yes? A. I think I gave you those particulars the other day. I think as high as seven and six. 2396

Q. Do you know what it is now? A. I think there have been charters made on a shilling lower.

Q. As a matter of fact hasn't it gone down to four and nine? A. I don't think that any trip charter has been made as low as that.

Q. Hasn't the price of coffee, the value of coffee, gone down just immediately proceeding or during that same period? A. From general knowledge I think the coffee is a little lower than it was.

Q. For some reason or other the value of what you call tonnage has decreased since 1912, and coincident with it

2397 in some way or other the value of coffee has decreased too? A. I think that is purely coincident.

Q. Has the rate on coffee gone down? A. I don't know what to-day's rate is, but I think it is the same as it was.

Q. The same as it was in 1912, that is right, isn't it? A. Yes, I think so.

Q. Now, you say the value of tonnage, what do you mean by the value of tonnage? A. I mean you go into the open market to hire tonnage and you pay at the open market price, the lowest you can get it at from anybody that holds
2398 tonnage.

Q. This tonnage which you speak of refers to charters, doesn't it? A. To steamers, yes.

Q. To whole steamers? A. Yes.

Q. For the purpose of these conference lines what has the question of the value of tonnage got to do with the question of freight rates where they do not require that any one shipper shall take their entire ship, but they will take from any person who pays the rate and signs his agreement? A. It has two bearings, the first is that if we
2399 would have to supplement our sailings with any boats that we have to take in the open market, we have to pay the open market value; if it is higher the boats cost us more, if it is lower they cost us less and as regards the operation of the company's steamers, a great many of the boats that are in the trade are on the same basis as the boats that constitute the open market, and they run for the benefit of public corporations, and the money that is invested, and they naturally unless they can earn the equivalent to the open market value will be tempted to seek trade that will
2400 pay it.

Q. I am now speaking about your regular boats upon which you quote the rates and on which the rates are fixed, as you have testified, in the London conference or at the conference abroad; what effect have the rates charged on those boats for what you call the fine goods, or the coarse goods affected by the charter rates of vessels? A. I could only repeat the second answer, that our boats belong to a public company, public money, have a value in the open market and you must necessarily make the same return to our investors as offer in the open market if it is possible. It would not be fair to conduct our business at a loss as compared with open market values.

Q. Do you mean to say your conference rates are always 2401
adjusted to the steady rates? A. They are not adjusted from day to day, but they are adjusted in the course of time. We are never able to advance them on a rising market as fast as the market advances, and we do not anticipate a dropping market until it is established.

Q. Well, then, your day by day rates are not made with reference to what you call the tonnage rate?

MR. BURLINGHAM: What does "With reference to" mean? He said "They said based on."

MR. BALDWIN: That is the same thing, based on 2402
the tonnage rates.

A. They are taking the situation by a period but if the market fluctuates up one day and down the next, of course, we do not change.

Q. Why up one week and down the next? A. We don't change it either by the day or by the week.

Q. How do you do it? A. We do it to adjust themselves to the going conditions when they become established.

Q. You mean to say that if for a given period of time 2403
the open tonnage rate is either lower or higher than the rates which you are quoting, then at the expiration of that time or during the period of time your rates are adjusted to meet it, is that it? A. If the conditions adjust themselves; like water seeks its level.

Q. It might well be then that for a period of a week, two weeks, a month or two months your rates remain the same although at any one of these given ports the tonnage rate might be either less or greater? A. That might be the case, yes. 2404

Q. Then the actual cost of doing the business is not the thing that is considered in fixing the rates on your regular steamers, is it? A. I should say yes; based on value.

Q. Well, if by any chance the tonnage rates should be greater than your current quoted rates, how would the question of cost of doing the business be considered, or taken into consideration rather? A. Why, I think I have explained quite clearly that the value of the tonnage that we operate would be increased.

Q. But the cost of doing business would not be increased, would it? A. You figure the cost of doing the business on the value of your tonnage.

2405 Q. That is to say, although your capital has not been increased, the amount invested in your business has not been increased, the number of men employed have not been increased, nor the rate of wages has not been increased, nor any of those items that are taken into consideration for ascertaining the actual cost of running and maintenance, had not been increased, because you have all of this plant and a certain price above your quoted rate is considered, that it is then to the advantage of the company to increase the rates because the value of the tonnage increased without the cost being increased at all? A. I
2406 should say that is correct.

Q. During 1912 did the Lamport & Holt Line charter any boats in the open market? A. Yes, they constantly chartered.

Q. In 1912? A. Yes.

Q. From the Brazilian ports to New A. Yes; we have employed charter boats.

Q. How many? A. I could no[illegible] right off hand.

Q. In this statement which you [illegible] up for the hearing
2407 before the Committee on Mercha[illegible] Marine and which is now in the record, page 932, you have given here the coffee brought from Brazil to New York by the Lamport & Holt Line steamers during the year 1912; will you just look at this and state which one of those boats are chartered boats? A. Subject to correction, and based on my general knowledge with detailed knowledge, I think that the *Tremont,* the *Tripoli* are chartered boats.

Q. That is two sailings out of how many? A. Forty-one.

Q. Two sailings out of 41 in 1912? A. Yes.

2408 Q. Where were those boats chartered? A. Chartered in Europe.

Q. Were they chartered with the agreement that you could purchase them? A. That I could not answer.

Q. You did purchase them, didn't you? A. I think we purchased those two; I am not sure, but I think so.

Q. Well, as a matter of fact, Mr. Daniels, at the time that these dates of sailing are mentioned for those two ships, they actually belonged to you, didn't they? A. That again I have not got the information; they were originally chartered boats and I think they were eventually bought for the company.

Q. Isn't it your best understanding that at the time of

these sailings on February 1st, 1912 and February 15th, 2409
1912 those two boats belonged to the Lamport & Holt Line? A. I could not answer you, because I think when they were bought their names were changed.

Q. They were changed afterwards, weren't they? A. I say when they were bought they were changed.

Q. They ran though for a while with that name and then changed them? A. They ran them several years under charter, I think two years charter period, and the details of those did not come under my knowledge.

Q. Then it is not a fact that instead of these two boats 2410
having been chartered in the open market at current tonnage rate that they had been under charter by the Lamport & Holt Line for a number of years? A. They were chartered for a time period originally as I understand it.

Q. So that so far as the rates were concerned for this period of 1912 it was not at all affected by the chartering of those two boats? A. Well, as you like in that respect.

Q. That is about right, isn't it? A. Those are not the only two boats they have chartered; we have quite a large fleet always under charter.

Q. I am speaking now about the tonnage from Brazil to 2411
New York; are you prepared to say that the chartering of the *Tremont* and the *Tripoli* in any way affected the rates that the Lamport & Holt Line charged during 1912? A. I am not able to answer the question. It does not come under our jurisdiction here in New York.

Q. What is that? A. It does not come under our management or jurisdiction here in New York.

Q. Do you know whether during any of this period you were chartering any of your vessels to the other conference lines? A. Again I could not; it is not under our de- 2412
partment in New York.

Q. When was it that this statement appearing at 932 of the record was made up? A. A few days prior to the date it bears.

MR. BURLINGHAM: January 7, isn't it?

Q. It says here coffee brought from Brazil to New York by the Lamport & Holt Line steamers during 1912, and your testimony was given before that committee on February 8th, 1913? A. Wasn't that enclosed in a letter?

Q. I don't know? A. It shows right there.

2413 Q. In any event it was made up sometime between the 1st of January, 1913, and February 8th, wasn't it? A. Yes.

Q. You did not make this up yourself? A. I supervised it, yes; looked it over.

Q. Did you compare the statements made in here with the books to know whether they were correct? A. No, I took the abstract of the cashier off from the books as made in the office as correct.

Q. And your books show the number of bags, the
2414 steamer, the capacity and how much the cargo was short; will your books show that? A. No, our books only show the cargo they brought. The rest is shown on what we have in the office, the size of the boats and capacity.

Q. Well, assuming that you had knowledge there of the capacity of each one of these steamers how would you arrive—you simply then would take the number of bags received and deduct from this capacity, is that the idea? A. Right, yes.

Q. Now, I notice here that the capacity of the *Canning* which sailed on May 8th, is 120,000 bags, and she was short
2415 112,344 bags; you notice that, don't you? A. Yes.

Q. How do you account for that great discrepancy in that boat? A. Apparently there wasn't enough cargo offering to fill it.

Q. Are you just simply guessing about that or have you looked up about it at all to know? A. In what respect?

Q. As to how on that particular boat the discrepancy should be so large between its capacity and amount it was actually short? A. I know for a fact that they despatched the boats with all the cargo they can get.

2416 Q. Mr. Daniels, don't you know as a matter of fact the *Canning* discharged on that trip before it arrived at New York 60,701 bags of coffee at New Orleans? A. I don't of my own knowledge. If so it was an oversight and should have been noted.

Q. You know, don't you, that these ships' manifests have to be filed? A. You mean here at the Custom House?

Q. Yes? A. Yes, certainly.

Q. If it should appear from the manifest here in the Custom House that it showed that 60,701 bags were despatched at New Orleans then the discrepancy I have mentioned heretofore would not be due to the fact that you

could not get a full cargo? A. No, it would be an over- 2417
sight in the statement.

Q. In that respect then this schedule you have gotten up would be incorrect, wouldn't it? A. In that one particular, yes.

Q. You haven't made any enquiry, nor did you order any enquiry to be made by any person in your employ to ascertain from the manifests whether any of the other vessels mentioned in this schedule had or had not unloaded parts of their cargo at any other port before they arrived in New York? A. It is very unusual that a boat should 2418
make a double trip like that. I think the *Canning* is the one exception.

Q. You did not even know of the *Canning* until I mentioned it, did you? A. Apparently that was an oversight.

Q. The question that I put was that you gave no directions that the manifests should be examined to see whether any of the shortage of the cargo, so-called shortage of cargo, was or was not due to the fact that they had unloaded part of such cargo in another port; you made no such directions, did you? A. The manifests at New York 2419
would not show it, but we should have knowledge in the office that such a thing occurred.

Q. You mean to say the manifests would not show it? A. Not at this port.

Q. It would not? A. No.

Q. Now Mr. Daniels, you seem to have had according to your statement a long experience in shipping; don't you know that you could not unload or get a permit unless your manifests showed everything in reference to cargo? A. We had two manifests, the New Orleans manifest showed all the cargo, but if she came from New Orleans 2420
to New York all the cargo she would need to show would be the cargo brought to New York.

Q. Don't you know that the regulations require that a manifest from any other port where they land to discharge cargo has to be included with and made a part of the manifest which is filed here and made a part of the regulations? A. It is done so rarely I am not posted, but if you say so it is perhaps quite correct; but the details I am not posted on.

Q. Coming back to my original question then, you did not order anybody to examine those manifests, did you?

2421 A. They are all made up from the manifests we have made up in the office that the ships prepare themselves.

Q. No comparison made with the manifests filed over here in the Custom House? A. We wouldn't get our details from that. You have those records.

Q. You didn't do it, did you? A. We got them from our manifests.

Q. So that as far as you know there may be many other mistakes in that same schedule? A. No, I am pretty confident there are no other mistakes.

2422 Q. You were confident that did not occur until I called your attention to it? A. I admitted it as soon as you called it. If there were any others you would have found them.

Q. You take the *Tremont*, according to this in February you were short about 99,000 bags; do you know whether during that time or period of year, whether coffee moves freely or not? A. I could not answer you positively because the conditions are not always the same; they are largely governed by the market values.

2423 Q. Mr. Daniels, since almost the entire importations over the Lamport & Holt Line during 1912 was coffee is it not a fact that some of the shortage here, the large shortage, is due to the fact that at some of those sailings coffee was not moving freely and others they were, when the shortage was not so great? A. The coffee season is generally at the end of the summer and fall, but the movement of it depends largely upon the market conditions, the value of coffee and whether Brazil is selling and America buying.

2424 Q. Can you look at that list and tell me how many of those boats in 1912 were on a triangular voyage; that is to say, from Liverpool to Brazil, and Brazil here? A. I cannot answer you definitely because I think some of these boats returned to South America and other ports in Brazil; others went from New York across the Atlantic to Manchester.

Q. How about the *Terence* on January, 1907, was that on a triangular voyage? A. She went down to Brazil one voyage, I don't know whether that particular voyage or not. The *Sallust* went to the River Plate one voyage, whether these particular voyages I can't tell; some of the

boats went across the Atlantic from New York. It is only a question of looking them up. 2425

Q. We have had the Custom House manifests looked up, Mr. Daniels; 18 out of the list that you gave here appear by the manifests to be on this triangular voyage, the *Terence, Sallust, Tremont, Tripoli, Thespis, Cavour* and the *Terence* again; the *Canning, Titian, Thespis, Camoens, Cavour, Siddons,* and then again the *Canning, Titian, Camoens* again, and the *Cervantes*; all of those originated in the United Kingdom, all of those voyages for all of those dates that I have mentioned. Now, assuming that to be the fact, Mr. Daniels, you were putting a good many boats on those Brazilian berths, weren't you, for the amount of traffic that you had? A. We did give them a very good service down there, yes. 2426

Q. More than they need? A. We give them all they need.

Q. And more? A. A little more, yes.

Q. For instance, at times you have had two vessels on the same berth, haven't you? A. I couldn't say, but if you have it down there it is correct. 2427

Q. On April 16th it appears you had the *Vasari* and the *Terence,* and on June 3rd at Santos, *Byron* and *Thespis,* and June 16th at Rio the *Verdi* and *Cameons,* and at Rio on July 6th the *Tennyson* and *Cavour,* followed in three days by the *Vasari;* on August 10th at Rio the *Siddons* and the *Byron,* and on September 16th at Rio *Verdi* and *Canning;* on October 10th *Titian* and *Byron,* and on October 21 *Cameons* and *Cervantes.* Now, those boats later according to your schedule, seemed to have come up here, and, according to your average about 50 per cent. arrived of full tonnage. That is to say, by having two boats on the berth at the same time there was not enough trade there to supply both boats, was there? A. It gives the merchants there good shipping facilities. 2428

Q. Yes, very good. Also rather expensive to the merchants, isn't it, for you to keep two boats on the same berth when one would do the same thing? A. The two boats run differently. The passenger boat stays in a port one day or two days, and more in some of the ports, and the cargo boat, although they run on a fast itinerary, also have a little more leeway when the merchants want to fill them.

2429 Q. But it costs more, doesn't it, to have two boats perform the service that one can perform in relatively the same time? A. We never can tell what the requirements from day to day of the coffee trade are; it is all done by cable.

Q. I am not asking you that; I say it costs the carrier more, doesn't it? A. I don't know how you look at it. We can simply take that into consideration in giving the trade a service.

Q. I am not asking that question; I am asking if it does
2430 not actually cost more to have two boats on the same berth to perform a service that one can do?

MR. BURLINGHAM: It does not appear that one can do it.

Q. We will take the statistics right on it; you furnished them here. I repeat the question I first asked you, whether you can answer that one. (Question read.) A. You are asking a hypothetical question; I am not able to answer that more than we found it expedient to serve the trade in
2431 that way.

MR. BALDWIN: I ask to have that stricken out.

Q. I repeat the question again. Are you or are you not able to state whether it costs the carrier more to maintain two boats on the same berth to carry the tonnage that one could carry? A. I think that is quite conclusive as you put it.

Q. Now, the fact that you are maintaining and have been maintaining during 1912 at the time that I have mentioned
2432 here, two boats on the same berth and your own statistics show that the boats were coming in about 50 per cent. short of their capacity, that in order to carry the tonnage which you have shown here it has cost the line more than if they could have done it with one boat? A. That is a natural conclusion.

Q. And that that extra cost is included as part of the rate they charged, isn't it? A. I don't think so; not to any extent.

Q. Do you mean to say that your strong desire to oversserve the shippers in this way has not been taken into consideration by the conference in fixing the rates? A.

No, I don't think so. Those boats are in South America 2433
and they are required to leave South America and come back to points where the market requires them, and if there is not enough cargo in South America to fill them all that in only an incident of the fact that there are more boats than there is cargo to fill them.

Q. In fixing the rates that your line charges or the conference lines charge, isn't that contingency taken into consideration? A. I cannot answer because that part of the business does not come under our jurisdiction, but from general knowledge I should answer to the contrary. 2434

MR. BALDWIN: I ask to strike it out. The general knowledge.

MR. BURLINGHAM: That is what everybody answers from, general knowledge. When he answers a question you don't want to hear it.

Q. Mr. Daniels, I will put the question in a little different form. (Question read.)

MR. BALDWIN: I will ask to have stricken out from "his general knowledge"; either he knows or he 2435
doesn't know.

Q. I understood you to say, Mr. Daniels, in your direct examination that you have never been present and never participated in any of the conferences abroad where rates were fixed? A. I don't recall that I made such a statement.

Q. If I misunderstand you, did you ever attend the conference abroad when the rates were fixed? A. Again I do not recall what was done at the conferences, but I have a good many years ago attended conferences abroad. 2436

Q. Mr. Daniels, I show what purports to be the tariff or rate book, tariff of rates of freight from New York to Brazil, Exhibit 1 for identification; can you tell me whether or not the rates that are set forth in that book are the rates that went into effect; I mean, were printed in 1904 and when the conference was made in 1908 were adopted by the conference? A. With the best desire in the world to help you I cannot remember such details so far back.

Q. Did you participate in any conferences in which the rates were fixed and went into effect in 1908?

2437 MR. KIELIN: Coffee rates?
MR. BALDWIN: Rates of freight; all rates.
MR. KIELIN: Inward or outward?
MR. BALDWIN: Abroad.

A. I don't think I have; attended any meeting abroad? Q. Yes, abroad? A. I don't think I have attended any conference abroad as recent as 1908.

Q. Any conference, whether for inward rates or outward? A. No, no conference at all. Of course, you mean by the word "conferences," conferences of several
2438 lines; you don't mean conferences of our own people?

Q. Yes, I mean conferences of several lines. When I use that I always mean that. It is already in evidence that the rates from 1908 have been frequently modified and changed? A. Yes.

Q. Abroad? A. Yes.

Q. That is to say, that at the conference abroad both for outward freight from New York and inward freight? A. I could not answer as to how it was done; but there have been changes.

2439 Q. And I understand that you participated in none of the conferences which made those modifications? A. To the best of my recollection I have not attended the conferences since 1908.

Q. A new rate went into effect in 1912, didn't it; it was in print in 1912 and went into effect in 1912; I mean tariff rates? A. I think so; I am not sure of it.

Q. Both for outward and inward freight? A. Inward freight I don't know anything about.

Q. Did you participate in any way in fixing those rates
2440 in 1912? A. From New York?

Q. Yes? A. At New York or abroad?

Q. No; I understood you to testify with reference to the tariff that was in print at your first examination here, that that was all arranged abroad? A. No, I think you will find that my testimony is that the adaptation of the foreign tariff was done here in New York; the conversion from foreign money to American money was done in New York.

Q. I think you are right about that; but what I mean is this: that the rates in the foreign tariff which was afterwards translated into what you call the American tariff

by change of denomination and all that, that was fixed 2441
abroad and you did not participate in that? A. I did not participate in it abroad, no.

Q. So all that you had anything to do with or participated in was simply to convert the foreign tariff into the American tariff with the American money rates? A. Yes.

Q. That is all? A. Yes.

Q. Do you know whether from 1908 down to 1912 that it very frequently occurred that you had more than one boat on the berth at a time in the Brazilian ports? A. In Brazilian ports? 2442

Q. Yes? A. Not of my own knowledge; I have no knowledge.

Q. You have no knowledge of that? A. No.

Q. Do you know whether in 1912 the conference abroad fixed the tariff for the incoming freight from Brazil? A. I don't know.

Q. That you don't know? A. No.

Q. Do you know whether or not there were any changes in the tariff in 1912? A. Incoming?

Q. Yes? A. I think the rate was advanced. That is my general knowledge that the coffee rates had advanced. 2443

Q. Where was that advance made? A. It was naturally made in Brazil.

Q. At the conference immediately in Brazil? A. I don't know; I have no knowledge.

Q. Am I to understand then that the rates from Brazil to the United States, and the rates from Brazil to the continent, or to Great Britain, were not always fixed in this London conference? A. I have no knowledge outside of anything in New York.

Q. You know that the terms of these coffee agreements 2444
were made abroad, don't you? A. I have general knowledge, of course; it is all general knowledge.

Q. You received those coffee agreements or coffee notices and so forth from your Liverpool house, didn't you? A. We have received the printed ones that I testified and have given you copies of.

Q. You have testified that the Lloyd Brazileiro carried over 50% of the outward cargo in 1912? A. I think again I did not give the date. I said it was my impression that the figures had been made up by one of the lines for one of

2445 the periods. I could not remember the exact date showing that result.

Q. Is there more than one American port served by the conference lines outward? A. Practically all of the boats come in New York.

Q. Since 1908 actually, not practically? A. I think we had one boat out from Norfolk in that period. I am not sure it is not two.

Q. Do you remember what year it was? A. No, I do not, without looking it up. Allow me to say that at some period
2446 or other we ran out of Savannah too.

Q. When? A. I don't recall.

Q. How many steamers? A. I do not recall. It may have been before 1908 even.

Q. Mr. Daniels, do you know whether or not in any one year since 1908 the Lloyd Brazileiro carried as much as 50% of the entire shipments? A. I am basing my statements entirely on recollection of a comparison made up by Messrs. Funch, Edye & Company during one of those years; I do not recall what year it was.

2447 Q. It was not knowledge of your own at all? A. No.

Q. And you don't know who made up that record of Funch, Edye & Company? A. I don't know who the person was.

Q. I say you don't know who the person was? A. They represented themselves.

Q. You don't know from what source they got that information either? A. I don't know as to that.

Q. So that the accuracy of it you cannot vouch for? A. I cannot vouch for it.

2448 Q. What percentage of the tonnage did the Lloyd Brazileiro since 1908 carry from Brazil to this country? A. Again I have no knowledge; no record.

Q. Do you know whether or not the Lloyd Brazileiro have been operating chartered vessels on their lines during that period? A. Yes, operating vessels that they own or—

Q. That is not responsive to my question? A. Also chartered vessels.

Q. Do you know what percent of chartered vessels out of their full tonnage? A. No, I have not gone into percentages.

Q. Do you know the number of boats they have purchased since 1908? A. Not without going into details.

Q. Don't you know as a matter of fact that at least half 2449
of their boats have been chartered? A. I should think that was a fair estimate.

Q. So that whatever percentage they carried from this port out to Brazilian ports a large part of it was carried in their chartered vessels? A. That is the natural deduction.

Q. Those chartered vessels of the Lloyd Brazileiro carried what you call this coarse freight, this heavy freight, coarse or gross? A. I think they carry all kinds.

Q. Don't you know as a matter of fact in their chartered 2450
vessels they carried almost entirely this coarse freight which you differentiated? A. I think they carried the majority of rough cargo.

Q. During this entire period your line was carrying what you call better articles of freight on which you got a higher rate, weren't they? A. We are fortunate in carrying a fair proportion of that kind of freight.

Q. Didn't you say that the Lloyd Brazileiro carried a very much larger percent than they did of what you call the better class of freight which brought a higher rate? A. 2451
No, I think the boats that compare in point of speed and so forth with the Lloyd Brazileiro boats carry about the same proportion of rough stuff that they have.

Q. What boats have you got that will compare with these chartered boats of theirs of the same class? A. I am speaking more especially of other boats in conference and not our fast boats.

Q. What percent of this 50 per cent. that you testified to from some of the reports of Funch, Edye & Company that you had was what you call the coarse freight and what 2452
percent was the better class or finer freight? A. I could not answer that in detail; I haven't it.

Q. Did this report that you saw of Funch, Edye & Company show that? A. I don't recall that showed more than the total tonnage.

Q. Now, as a matter of fact vessels that carry what you call the finest freight get a higher rate, don't they? A. Yes.

Q. And therefore, that the net revenue that they receive would be greater than that from those boats carrying the coarse freight? A. Not the net revenue, because it

2453 costs a great deal more to operate and load the fast boats than it does the tramps.

Q. Come down now to the boats that were not tramps; take the Lloyd Brazileiro boats that were not tramps that carried—not chartered boats—but also carried, did they not—a large part of the freight carrying, however, was gross freight or coarse freight? A. I don't know as they have any boats that are not a poor class of boats.

Q. You think all of their boats are poor? A. I think so.

Q. Since you labor under that impression, let us compare
2454 them. How do your boats compare with the Prince Line? A. It all depends upon the point of view.

Q. I suppose your boats are better than the Prince Line? A. We think so.

Q. And likewise better than the German boats? A. That is our opinion.

Q. You heard it testified here by Mr. Waddell that some of the Lloyd Brazileiro boats were larger and newer than some of the boats on your line and the Prince Line and the German Line; did you hear that? A. I didn't hear it, no.

2455 Q. Well, is it so? A. I think it is very difficult to establish such a statement.

Q. You think that is a question largely of opinion? A. No, I think they are both so poor that none of ours is quite so poor; that our poorest is better than their fair.

Q. And that is true of all the conference lines' boats; they are all better than the Lloyd Brazileiro? A. I think so.

Q. Have you examined the Lloyd Brazileiro boats, have you drawn a comparison? A. Their own boats, we had the difficulty of selling them to them. We sold them all of
2456 those, the *Tapajoz* and *Tocantins* and some other things.

Q. They have been running, haven't they, ever since? A. And they were pretty poor boats.

Q. Did you represent it to them when you sold them as poor boats? A. They paid a very small price, and we had great difficulty in getting it out of them.

Q. You mean you or—— A. The people that owned them. We represented them.

Q. How many tin cans do you run? A. We don't name our boats as literally to their qualifications as that.

Q. There has been some testimony here that a few of

what you call tin cans had to be discarded; it has been 2457
testified here, Mr. Daniels, by yourself that during this period of 1908 you sold and discarded a number of your boats because they had become obsolete, is that so? A. Quite correct.

Q. Did you try to sell those obsolete boats to the Lloyd Brazileiro? A. They were in the open market, we could have sold them to anybody.

Q. Did you try to sell them to the Lloyd Brazileiro? A. We personally did not.

Q. Do you know whether or not the Prince Line during 2458
that period had sold and disposed of some of their boats? A. I cannot speak for the Prince Line; I don't know of my own knowledge.

Q. As a matter of fact they have been running the same old tubs, haven't they, right along? A. Yes, I think the word is rather misapplied.

Q. Since you used "tin cans," let us call them tin cans, They have been running the same old tin cans since time immemorial? A. You misunderstood me. I didn't say tin cans; I said *Tocantin*. It is commonly called so for 2459
short; here name is abbreviated "Tin Can."

Q. What other boat did you sell to the Lloyd Brazileiro? A. We personally did not sell any; we acted as agents for the people who sold, I think four boats that constituted the fleet——

Q. What other boats did you sell to the Lloyd Brazileiro? A. We were connected with the sale and collection of the money on them, yes.

Q. What other boats, I said, did you sell; name them? A. I don't remember what their names are at present; 2460
Tocantin, Tapajoz and I think the *Purus*. I am not positive about that. And there is a fourth boat, I do not recall her name at present. They were old, obsolete boats seeking a market when the Lloyd Brazileiro bought them.

Q. That makes four out of twelve of their boats. Now, what about the other eight? A. I think the other eight are chartered boats.

Q. You think they are? A. Yes.

Q. Are you willing to go on record here as stating that they are? A. No, I am not; I don't know anything about it.

Q. As long as you cannot state with any definiteness it

2461 is not necessary for you to do any thinking about it. I asked you what about the other eight; if you don't know say so? A. I don't know of my own knowledge.

Q. You stated that in 1912 there were six sailings of outsider or tramp vessels from New York or Philadelphia. Now, do you know upon what basis those boats were chartered or upon what terms they sailed? A. Most of them were chartered boats.

Q. And isn't it a fact that they were chartered here by merchants? A. Either here or in Brazil.

2462 Q. And they were able to charter those boats at rates less than the conference rates? A. No, they chartered them at the market rate, I think at the time.

Q. I am not asking you what you think; don't you know as a matter of fact that they did charter those boats and it is a matter of record here that they were less than your rates? A. I think you have the two a little at cross purposes. The charter was not less than our rates because we pay the same rates in the market that they do for the charters.

2463 Q. Did you charter at that time, 1912? A. We did.

Q. Here in New York? A. Yes.

Q. What boats? A. But I don't think they were run in the Brazil trade.

Q. I am now speaking about boats in the Brazil trade? A. I don't think we had any chartered boats in the Brazil trade in New York.

Q. Is it not a fact that those boats were chartered here in New York at rates less than your line or the conference lines were quoting?

2464 MR. BURLINGHAM: Rates of freight they were quoting or charter rates that they were quoting?

MR. BALDWIN: That the average rate was less than they were putting in.

MR. BURLINGHAM: At the chartered rate or less than the freight rate?

Q. Yes? A. The charter rate was the same practically; we paid the market rate and they paid it.

Q. Although you are not able to state at this time whether or not you had any boats that were on charter for the Brazil trade? A. I cannot state without looking up

whether or not we employed any chartered boats at that 2465
period.

Q. Did you give us a list of the tramp steamers that sailed from New York to Brazil during the years 1909, 1910, 1911 and 1912? A. I am not able to make that up.

Q. You have stated, Mr. Daniels, that the conference lines only served the port of New York outward and no other American port regularly? A. Regularly, yes.

Q. With an exception of a few actual instances such as you have mentioned? A. That is correct.

Q. That this has obtained since 1908? A. That is my 2466
recollection.

Q. In answer to Mr. Burlingham's questions, or one of his questions, you stated that the cargo that goes over your line and the conference lines, I think you also said originated from all parts of the United States? A. Yes.

Q. A great many of them I suppose originated from places south and west of New York? A. Yes.

Q. That is to say, along the Mississippi valley and along the Gulf and Texas? A. I presume so, without knowing the details. 2467

Q. These exports embrace rosin, lumber from the Gulf states, does it not? A. I understand so.

Q. And machinery and tobacco and things of that kind from the Middle West? A. So I understand, yes.

Q. And also tobacco from the Mississippi valley, the southern Mississippi valley? A. I don't know where it comes from——

Q. Is there any cotton shipped? A. I don't think so. There may be a little, I suppose, but it is not regular.

Q. But isn't there during the year quite considerable 2468
cotton from New York over the conference lines to Brazil ports? A. I don't think any cotton of any account; Brazil is a producer of cotton.

Q. And in order to get these commodities to New York to ship they have got to be transported, if they come from the south and west; long distance by rail, don't they? A. That is the presumption.

Q. If either one of the conference lines were to start service, say, New Orleans or any of those ports other than New York, it would be considered a needed service, wouldn't it? A. That I cannot answer; a hypothetical question.

2469 Q. Taking the agreement, don't you recollect the sailings and the points of departure are set forth? A. I cannot answer your question.

Q. Since this agreement went into effect, this conference, none of the lines have attempted to inaugurate a service from any other port than New York, a regular service? A. Not to my knowledge.

Q. You will notice that in paragraph two of the outward—under head of outwards—provide that the tariff of rates from New York be drawn up and entirely adhered
2470 to, and so forth. Now, doesn't that indicate, Mr. Daniels, that the sailings were to be from New York, the sailings that are mentioned in paragraph one? A. I could only make a supposition on that. That speaks for itself.

Q. Isn't it your idea and your understanding that the service was to be from New York entirely under this agreement? A. I have no knowledge of the agreement further than it says. It does not come under our jurisdiction at all.

Q. But under that agreement, as you have said before,
2471 you have confined it to that, haven't you? A. We have operated exclusively from New York.

Q. If any of the conference lines were to inaugurate a service, we will say from New Orleans or from the Gulf ports, in the natural order of things freight from the contiguous territory would naturally go to that port rather than come to New York, wouldn't it? A. Again it is a guess I suppose; I am not competent to answer.

Q. You know it costs a great deal more to transport a commodity, we will say from some place contiguous to the
2472 Gulf, to New York than it would be to transport it to New Orleans for shipment, don't you? A. I can only theorize the same as you would yourself.

Q. You can assume that much, can't you? A. It sounds reasonable.

Q. You have testified pretty fully about your general knowledge of the scope and purpose of this service, and knowledge of shipping and so forth; do you mean to say that you haven't any judgement upon whether it costs more, say to ship a carload of tobacco, from a place close to New Orleans than it would be to New York, or know enough about the question of rates to make that statement?

A. I have a good many ideas, the same as yours in theory, 2473
but I find they do not work out in practice.

Q. Have you found out it will work out in practice, Mr. Daniels, that it costs more or as much for a short haul than it does for a long haul? A. Those are all self-evident.

Q. You mean by that, of course, it costs more to ship to the point furthest from the base where the commodity originates? A. That is theoretically correct.

Q. Didn't you understand, Mr. Daniels, that after the conference was arranged that at least it was the under- 2474
standing of your principals that none of these lines were allowed to start service to any other port in the United States than from New York? A. That is a point we have no jurisdiction over.

Q. Look at this and then answer the question. (Handing witness Exhibit 143.) A. Exhibit 143 is apparently a letter from our principals giving us the position they take for our information here.

Q. Was it their contention that none of these lines had the right, the Prince Line and the others, had no right to 2475
start any other service than from New York and to New York? A. I can only judge from what they say here. That is all I know about it.

Q. All the tariffs that have been adopted by the conference the London tariffs and were modified here in any respect, all had to do with rates from New York and not from any other port? A. Yes, that is correct.

Hearing adjourned until Tuesday, April 22nd, 1913. At eleven o'clock A. M.

2476

2477 New York, April 22, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles Burlingham, Esq. and Charles C. Burlingham, Esq. for Frederick T. Busk, et al.

2478 MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for Prince Line, et al.

LORENZO DANIELS recalled.

RE-DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Daniels, has the same ratio between the rates on high class freight and what you term the bulk or rough freight which existed in 1908 been preserved in the advances made by the conference lines since that time? A. I should say in general yes, although the actual ratio I
2479 don't know; the actual rates we have never figured in that way.

Q. Angle bars and plates, rails and so forth is what you would call rough freight, isn't it? A. Yes.

Q. Has there been that uniformity of advance in reference to that class of bulk freight? A. I could not answer you in detail without reference, but I should say generally yes.

Q. Now, the tariff rate from 1904 to 1908 was $6.50 a ton, wasn't it? A. I haven't it in my mind; you have the
2480 record.

Q. I have an Exhibit showing the rates from 1904 to 1908, that $6.50 generally was the charge; in 1912 it was $6.00 a ton; if that is so then it would show that in so far as the bulk or rough freight is concerned, at least in the instances that I have just mentioned, this kind of commodity, that it has not been advanced, but as a matter of fact there had been a decrease? A. I think the figures say wrong, but I haven't got any figures before me to contradict you.

Q. Now, I show you this Brazil tariff——

MR. BURLINGHAM: What year?

Q. I understand this is the one that was in force from 2481
1904 to 1908; you look at it and state if that isn't so? A. I could not tell by just looking at it; I would not recognize it; it is so far back.

Q. Look on the first page and see whose handwriting that is on top? A. Again, I do not recognize the handwriting; but it is marked as you say, which I presume is correct.

Q. Don't you understand it to be, that this is the published tariff? A. The one we had printed in 1904.

Q. That was in force from 1904 to 1908 with the amend-
ments all in; just look at it? A. You are getting beyond 2482
my memory; I cannot testify to these various things.

Q. This rate that I speak of is the Rio rate, $6.50. Look again at this book I have shown you, at page 33, and you will see that there is a small folder that is pasted in there which gives the rate to Rio as of January 8th, 1906, iron plate, poles, sheets, rails, fish plates, and so forth, and see if that is not the rate of $6.50 per ton? A. Now, speaking with this in front of me and without——

Q. No; answer my question? A. No, I think there is a
blank. I think that $6.50 is for the lots under 40 tons 2483
landed. That is $4.00 in that tariff of 1904 which I presume is about the best rate; whether it is lower than that I don't know. Then it went to $3.50; I can't be positive.

Q. If you are testifying talk to the question? A. Your tariff there shows $4.00 and my recollection is that that is correct, and it may possibly have gone so low as $3.50; that I can't verify to-day without looking up some data of that date.

MR. BALDWIN: I offer from page 33 of Exhibit 1
for identification, what purports to be an amend- 2484
ment slip of rates with reference to iron, iron pig and plates, and so forth and particularly the rate of $6.50 which is in the third column in lots of 40 tons and over, which would apply to the third column; that is to say, to Rio at $6.50 a ton f. f. a.

	Bahia	Rio de Janeiro	Santos
Iron (angle, bar, bundle, hoop, plate, tees & scrap) not packed.			

2485	Iron (pig			
	" Plates, enamelled (not packed)			
	" Poles (under 2 T., not exceeding 30 ft.)			
	" Galvanized (not packed)			
	" Sheets, corrugated (not packed)			
	" Rails, Fish Plates, Switches, etc. (not packed)			
2486	In lots of 40 tons & over, per 2240 lbs. gross, net f. f. a.,	$6.50	$7.	$6.50
	net delivered	—	—	—
	The above Iron, in lots under 40 tons, per 2240 lbs. gross, net delivered,	$8.00	$8.	$8.00

Q. Now, I show you Exhibit 3 and call your attention to what is designated at page 49 of the exhibit under the head "Rails, accessories" and so forth; the rate to Rio,
2487 $6.00, f. f. a., and I ask you if that is not the rates that were published in 1912? A. The rates which you refer to in your earlier statement you read incorrectly into the record.

MR. BALDWIN: I ask to have it stricken out and Mr. Daniels limited to a direct answer when I ask a question like this; if he does it again I will go at once before the Court and have you repremanded. I ask to have it stricken out and I ask the Commissioner to direct him that when I ask him a question he has no business to revert back to another ques-
2488 tion or answer or exhibit and criticize it.

(Question read.)

THE COMMISSIONER: Answer that directly and let your counsel bring that out. The question is simple. Was it the rate published in 1912? A. The attorney for the Government has read two rates into the minutes, one, the previous one, that he purports to have shown to me, and he has not read it in correctly.

MR. BALDWIN: I ask to have that stricken out and I ask that he be warned that if this is repeated that the Commissioner himself will have this matter cer-

tified up, and see whether this can be an orderly procedure. That question is susceptible of a categorical answer. 2489

MR. BURLINGHAM: Answer it as well as you can.

MR. BALDWIN: I ask to have stricken out this diatribe of his.

THE COMMISSIONER: Answer it directly, Mr. Daniels, and let your counsel bring out the other side of it, if there is one. The question is whether that is the published rate of 1912, whether it is correct or not is another matter. 2490

A. The tariff gives a rate for small quantities and no rate for large quantities.

MR. BALDWIN: Repeat the question again. (Question read.)

THE COMMISSIONER: You can answer that. Is it a rate that was published? Whether it is correct or not is another matter.

THE WITNESS: It appears to be the tariff rate in small quantities. 2491

Q. Still not responsive. Is it the published rate?

MR. BURLINGHAM: He has answered.

THE COMMISSIONER: Is it the published rate?

A. To the best of my knowledge there is no published rate.

Q. Mr. Daniels, this Exhibit 3 is already in evidence as to rates that were in course of printing in 1912, but they have not yet been found. Now, I ask you if this page 49, under the head of rails, and so forth, and the rates therein, are not the rates that were in force and effect since and during 1912? 2492

MR. BURLINGHAM: I submit he has answered.

A. That is quite a simple question. I am not able to answer it. I don't know what rates were in effect in 1912 without looking them up.

Q. Do you recognize the Exhibit 3 of which page 49 that I am calling your attention to is a part; did you ever see it before? A. Not to my knowledge. That particular page, but I take it for granted that it is correct.

2493 Q. You take it for granted that it is correct? A. Yes.

Q. Now, I notice that on the third column, under the head of "Rio de Janeiro" with the marks dollars and cents—dollar mark and ¢, and opposite the last word are the letters f. f. a., and before that there are words indicating rails, accessories, sleepers, and so forth, and under the column "Rio de Janeiro" I find the figure 6, and I ask you what it refers to? A. The figure speaks for itself.

Q. It means $6 a ton for those particular articles from New York to Rio, f. f. a., doesn't it? A. With certain
2494 qualifications which you have omitted.

Q. You point out on page 49, starting with "Rails and accessories" and ending with the word "f. f. a.," what I have left out that belongs to the question of the rate? A. In lots up to 500 tons; lots over 500 tons the rate is open and it does not apply to lots over 500 tons.

Q. Then I understand you to say that there is something in here that says above 500 tons the rate is open? A. Yes.

Q. Where is it? A. The next item, the next paragraph, the next line.

2495 Q. I find here that "rails up to 35 feet long and unpacked, rail fastenings, like Chairs, Bolts, Nuts, Fish plates, Switches and Crossings (When accompanying rails), in lots up to 500 tons, f. f. a." and I don't find anything about weights or anything else; I just simply find a line. Now, where is it? A. In amounts over 500 tons rates to be agreed.

Q. In lots up to 500 tons f. f. a. are those, aren't they? A. That is the nominal rate; practically they were never shipped in such small quantities.

Q. Then in lots of 500 tons the words "Rate to be
2496 agreed" means they did not ship by any of the conferees, is that the idea? A. It is the open rate.

Q. That is what you call it open rate? A. Yes.

Q. Then the rate to Rio for lots up to a weight of 16 kilos per meter and sleepers and so forth for gauges up to 30 inches—what does 30 I & S mean? A. Gauge up to 30 inches.

Q. English scale 762 millemeters and usual appurtenances thereto f. f. a., the rate to Rio is $6.00, isn't it; that is in 1912? A. I should say yes.

Q. Now, the rate then in 1904 and 1908 of iron plates,

poles and so forth that appears on the slip at page 33 in 2497
lots of 40 tons and over for 2240 pounds gross, net f. f. a. from New York to Rio was $6.50, wasn't it? Have I got that right? A. I think it was $4 at that time.

Q. This slip shows it $6.50, doesn't it, that I have offered in evidence. Just answer that? A. The slip is blank underneath that for the larger quantities. There is no rate at all there.

Q. I say for the quantities that I have mentioned in lots of 40 tons and over, net f. f. a., appears on this slip to Rio to be $6.50, doesn't it? A. I agree it appears on that slip 2498
which you show me to be $6.50.

Q. Now, I find that on the same Exhibit 1 for identification that cement for 2240 pounds to Rio, on page 14, appears to be $4.20, and in Exhibit 3 the rate for 1912 as printed in this Exhibit appears to be the same; that is right, isn't it? According to those two Exhibits there has been no change since 1904, is that right, Mr. Daniels? A. For pieces and marks according to the Exhibits you show me it may be right, but according to the facts it is not so.

Q. According to the Exhibits it is right, isn't it? 2499

THE COMMISSIONER: According to the Exhibits it it is the fact, isn't it?

A. I don't know whether that first book is f. f. a. or landed; the second one, that is not the correct rate.

Q. What do you say about that; are the rates the same as appears in these two Exhibits? A. The rates as you show me in those two Exhibits is $4.20 in that case.

Q. Mr. Daniels, I understood you to say yesterday that during 1912 the charter rates per dead weight ton was 7 2500
shillings six pence, is that right? A. Not for the entire year, it fluctuates, of course. I gave the rates, I think the dates were in October and November; in the fall of the year.

Q. That rate applies entirely to charter rates, does it not? A. To charter rates.

Q. Had the Lamport & Holt Line any steamers under charter in that year on the Brazil trade? A. Yes, they had under charter from time to time.

Q. 1912? A. Yes.

Q. What were they on the Brazil trade? A. I don't recall.

2501 Q. Was it the two I mentioned yesterday that were subsequently purchased by the Lamport & Holt Line? A. I think they were purchased before 1912.

Q. And you are quite sure in 1912 on the Brazil trade you had boats running under charter between New York —— A. I am not speaking of between New York. I don't think between the Brazil trade and New York, southbound; we did northbound.

Q. On southbound, the outward rate then? A. We didn't have it.

2502 Q. You spoke about 7 shillings 6 pence per dead weight ton and you meant that was the rate outward, didn't you? A. No, that is time rate per ton dead weight.

Q. But from New York? A. Yes.

Q. It is the rate prevailing here? A. Yes.

Q. During that period of 1912 you had no steamers under charter? A. We had them under charter in other trades; whether we had them in this particular trade under charter I do not recall.

Q. Isn't it your best recollection that you did not? A.
2503 I think the papers show we did not. Our records. I think we looked up and found that we did not have any in that period; that is my recollection.

Q. Does the Lamport & Holt Line have any charters excepting time charters? A. Yes, we have trip charters occasionally.

Q. That is very infrequent, is it not? A. No, not so infrequent; we have had a number in the last year from New York.

Q. How many trip charters has the Lamport & Holt
2504 Line had from New York in 1912 to Brazil? A. In this trade I don't think any.

Q. And no time charters I suppose in this trade for the same period? A. I think the records show that in 1912 there were.

Q. From about 1911? A. We have had them at different times. We are constantly employed——

Q. What is the ratio between the ship charters and the time charters of vessels that Lamport & Holt has in this trade? A. The ratio between what?

Q. The vessels you have under time charters and those you have under trip charters; are one or the other greater? A. We have more recently under time charter

than trip charters; but it is all a question of figuring the 2505
market as to what comes out the best.

Q. As a matter of fact since 1908 the number of trip charters that you have had in this trade has been small as compared with the number of time charters you have had? A. I should say there were more time charters than trips.

Q. Considerably more? A. I haven't the record; there have been a number of both.

Q. You must have a general idea whether the excess is great or small? A. Most all of our Atlantic trade we run 2506
on trip charters and the Brazil we haven't any to speak of at all.

Q. That means since 1908? A. I think the records show very few. We went through it in the testimony a few days ago and gave you all of our sailings and all the regular and outside boats; it is on the record.

Q. Coming back to the question of the sailings from New York alone during this conference period, I think you testified yesterday that any shipper anywhere in the United States that wished to ship to any of the Brazilian 2507
ports or any of the conference lines' boats would have to send to New York, wouldn't they? A. We haven't had any from any other port except New York for sometime.

Q. In answer to a question of Mr. Burlingham on cross-examination you said that the growth of the trade, that is this Brazilian trade, as I understood it, from the United States through a cycle of years had been pronounced; do you remember that? A. Steadily increasing.

Q. That cycle of years would embrace what period of time, your thirty-three years of knowledge? A. No, be 2508
cause I don't think we have been running to Brazil more than half of that time, fifteen years.

Q. Would you say it covered fifteen years? A. I think fifteen years about.

Q. During that fifteen years there has been what you call competition or what I call competitive ones and times like the present non-competitive, have there not? A. I presume there must have been.

Q. You know that to be a fact, don't you, that prior to 1907 there was another period in which they were not in conference? A. Yes, I think so, in some of those years.

627

2509 Q. Now, this increase in trade with Brazil was gradual right straight through those periods and was the same in the non-competitive as through the competitive period, was it not? A. I don't think that that covers entirely these——

Q. That is not the question? A. I haven't the record; the statistics will show that.

Q. You were asked a general question, your long experience in the Brazil trade, and then were asked the general question whether or not there had not been through a cycle
2510 of years a pronounced growth of that trade? A. Yes.

Q. Had you looked up any statistics at all or were you simply relying upon your general knowledge? A. I was relying on my general knowledge and the fact that I had seen statistics at various times, but did not have them in mind.

Q. When you had those statistics before you did you ever compare them so as to say whether or not this growth was not practically progressive through all these years regardless of the fact that there was competition or no
2511 competition among the lines? A. I think that has been an item in the business; the growth has been steady.

Q. Now, assuming that the growth has been steady and evidently in non-competitive times as in the other, then the cause of the growth was not the nurturing of these conferences, was it? A. They were contributory I think, but not by any means the entire reason.

Q. You do not claim that in fact these conferences were the sole cause of this increase, do you? A. No, only of a part of the whole.

2512 Q. As a matter of fact there has been a general trade revival all over the world for the last fifteen years, hasn't there? A. I believe there has as far as the United States is concerned.

Q. Is it not a fact, Mr. Daniels, that the Lloyd Brazileiro serves more Brazilian ports than the conference service does? A. I think they do, yes.

Q. During the year 1912 how many round trip voyages have you had during the year; that is to say, you had one of the Brazilian ports as the terminus? A. I could not answer without data, but I think only twelve.

Q. You stated upon your cross-examination that you

had added to your fleet during 1912, you remember that, 2513
don't you? A. Yes.

Q. What steamers? A. I think we have added about a dozen steamers, but I will have to look the names up for you.

Q. I mean in 1912, Mr. Daniels? A. Yes, in 1912.

Q. I mean in this Brazilian traffic? A. Oh, the Brazilian traffic itself?

Q. Yes.

MR. BURLINGHAM: New York to Brazil you mean?
MR. BALDWIN: Yes. 2514

A. Only permanently the *Vestris* and, I think, the *Veronese* was added, but she was lost out and the *Van Dyke* substituted for her, but did not come out until this year.

Q. What about the *Vasari* and *Verdi*? A. They preceded; they came out a year or two earlier.

Q. These vessels that you have spoken of having been added to that fleet, they were boats that the Lamport & Holt Line had in their service in other parts, weren't they? 2515
A. No, the *Vestris* was brand new, came in the service her first trip, and the other boat had been working on the other side a year and was sent over here.

Q. What boats of yours serve your Brazilian ports directly in the passenger service? A. I think I have already testified to that once and given you a list.

Q. The *Byron* and *Tennyson*, isn't it; those are the only two, aren't they? A. They were the only two that made Brazil a terminal.

Q. That is what I am speaking about? A. Those two are the only boats that made Brazil a terminal. 2516

Q. When were those steamers built? A. I don't recall.

Q. 1900 or 1901, weren't they? A. It is in the register, of course.

Q. Isn't that your recollection? A. I admit any facts; it is a matter of record.

Q. Our record is to the effect that one was 1900 and the other 1901? A. I will take it for granted.

Q. You would call those old boats, wouldn't you? A. Old in a certain way; a passenger boat is supposed to be old at about ten or twelve years.

2517 Q. It would be called an old boat for the passenger service, wouldn't it? A. Yes.

Q. The types themselves in the present state of the art would be considered obsolete, would they not, for the passenger service? A. They are not desirable; one of those boats is still running.

Q. Which one? A. The *Byron*.

Q. What about the other? A. She is running as a freighter.

2518 Q. You have testified here in answer to a question of Mr. Burlingham as to statistics showing the cost of carrying a bag of coffee for a nautical mile; do you remember that? A. Yes.

Q. Do you remember what you stated it was? A. I will know only by looking it up.

Q. What did you testify that the cost in cents per bag per mile was from Rio to New York? A. It is a matter of record; one one-hundredth of one cent.

Q. Do you mean nautical mile? A. I have got it in nautical miles, yes.

2519 Q. From what source did you get that information? A. What information?

Q. With reference to the cost per bag per mile? A. Why, it is a matter of figuring. It is worked out at the rate of 50c and 5% per bag of 132 pounds.

Q. I don't now recall your stating anywhere what constituted the cost per bag of 132 pounds or how you ascertained it; I mean the cost of freight per bag of 132 pounds? A. At the time these figures were made, I think in December, that was the current rate from Brazil to New York.

2520 Q. Then when you speak of the cost of carrying a bag you mean by that what your line or a conference line really charged the shipper for carrying the coffee? A I mean the cost to the shipper, of course.

Q. You testified, did you not, the other day from a paper which you had submitted to the Committee on Merchant Marine which held its hearing in Washington in February? A. About what?

Q. With reference to this cost to the shipper per bag per mile? A. Yes, I had given those figures.

Q. It is in the form of a letter? A. In the form of a letter.

Q. Which you sent to them and from that you gave the

testimony you gave here in answer to Mr. Burlingham's question? A. Corroborative, yes. 2521

Q. Now, according to this letter which appears in the record addressed to Dr. S. S. Huebner of the Committee on Merchant Marine and Fisheries, Washington, D. C., I find that just before you give the statistics you make this statement: "A bag of coffee weighing 132 pounds from Brazil to New York has been paying 40c and 5% a bag. Within the last fortnight the rate has been advanced to 50c and 5% per bag." That 5% is primage, isn't it? A. Yes. 2522

Q. What occasioned that advance? A. I don't know at all.

Q. Do you know whether or not the actual cost to the carriers in carrying it per bag had increased in any way? A. No.

Q. And so far as you know it is arbitrary advance made by the conference? A. It does not come under my jurisdiction at all; I don't know.

Q. Can you state whether, within the fortnight that you referred to in the exhibit that I have just read from, whether the tonnage had been dropping or not? A. I am not able to state. 2523

Q. You were asked how the rates charged in this Brazilian traffic compared with the charges of other European lines; do you remember that? A. Yes.

Q. You meant by that the other European lines that were in this conference and the North German Lloyd and the Royal Mail Steam Packet Company, didn't you? A. The lines that act in accord from Europe.

Q. You meant then these conference lines and the two I have mentioned? A. There may be more; I don't recall. I don't know the conference in Europe. 2524

Q. You meant the Lamport & Holt, the Prince Line and the German lines who are parties defendant in this suit and the North German Lloyd and the Royal Mail Steam Packet Company, don't you, the Signatories to these agreements, and notices to shippers which are already in evidence here? A. I am not able to answer that question unless you will allow me to qualify as I understand the matter, as I understand the situation.

Q. What lines did you refer to when you compared your charges with the other European lines; can you answer

2525 that way? A. Our own line alone, a line from Europe; the Hamburg people run a line from Europe and they have the European conferences, and they have a tariff for those conferences from Europe to Brazil and that is what I had reference to as the tariff to Brazil.

Q. But generally speaking as I understand it I have practically mentioned the lines embraced? A. I don't know of any lines that are in the conference.

Q. During this competitive area which you called a rate war in 1907 and part of 1908 where were the rates fixed
2526 for the Lamport & Holt Line during that period? A. Again I don't know.

Q. Do you remember whether the principals in Liverpool fixed the rates or whether they were fixed here by Busk & Jevons or Busk & Daniels? A. I do not recall the details without looking it up.

Q. Did you have any authority to meet rates that were offered by your competitors at that time? A. That I do not recall.

Q. As a matter of fact you did, did you not, whatever
2527 rates were in competition offered by anybody else you met them, didn't you, to the best of your ability? A. Taking the natural inference I should say yes; the exact details I don't remember.

Q. You have in some testimony here spoken of the state of mind of your firm and yourself particularly as a shipper, as a merchant; now, in what form of merchandise exported to Brazil does your firm engage in? A. We are not in the merchandise business to Brazil at all.

Q. Were you ever in that line? A. We were, a good many years ago.

2528 Q. Have you been since 1908? A. No.

Q. So then whatever opinion that you have expressed as to the advantages to your firm as a shipper in the regularity of sailings, the standardization of rates as you have called it, and the regularity is not based upon your experience as a shipper to these coffee ports at all? A. Not any Brazil ports, no, sir.

Q. What line of commodities do you ship anyhow? A. We ship all classes of merchandise, machinery, staple goods and fine goods and rough goods only to other parts of the world than Brazil.

Q. Assuming that the regularity of sailing is, as you

say, one of the elements of advantage to shippers, is there 2529
any reason why the Lamport & Holt Line would not be able to have regularity of sailing if they were in competition rather than if they were in conference? A. Only unless the business was able to show return for the capital invested; it would not pay us to pursue it on some lines, a broad policy.

Q. Outside of the economic question as far as they are concerned on the profit and loss side they would be just as able to have regular shippings out of conference as in it, wouldn't they? A. We would not be able to unless we 2530
had the money, because that is primarily the whole business.

Q. But assuming that the company had the same number of ships it has now, and has been having, and its capital not impaired, it would be able to have regular sailings, would it not, just the same out of conference as in? A. It woud be possible.

Q. Your sailings were fairly regular during this competitive era in 1907? A. I think so.

Q. You were asked by Mr. Burlingham as to whether or not your rates were reasonable and you testified that in 2531
your judgment they were and you further testified at page 944 of the record that freights were earned by the steamers up to 1910 you thought were not sufficient to make the business remunerative; are you speaking about the Lamport & Holt boats? A. Yes. I was speaking of others too.

Q. What sources did you look to to ascertain whether the rates that obtained up to 1910 on the Lamport & Holt Line were or were not remunerative? A. The home company gave us the abstract from their books to make our reports here. 2532

Q. You mean to say for the corporation taxes? A. Yes.

Q. That is for the purpose of showing that your net income was at a certain amount after having made the deductions which the corporation act provided for, is that the idea? A. Yes.

Q. Upon the business done in this country? A. Presumably.

Q. You realize, don't you, that the corporation tax measure applying to foreign corporations only assesses a tax above a certain sum on the net income either earned in or on the part of the plant actually engaged in business in

2533 this country, you understand that, don't you? A. I might say yes.

Q. Generally speaking that is about right? A. Generally speaking, yes. I have not followed it up.

Q. Now, did the memorandum that was furnished you by your principals show anything more than what obtained with reference to this Brazilian trade? A. I think it covered, of course, their business in this country.

Q. All over this country and also to all the South American ports from this country? A. Yes.

2534 Q. Did it also show what the cost was, actual cost, of the operation of each boat within the period covered by the tax and the income received from that boat? A. I think not. I think it was all total.

Q. Those statistics were not you own, were they? A. No.

Q. Have you any knowledge of your own of what it cost, the actual cost, of shipping a bag of coffee during any one of these years from the Brazilian ports to New York? A. No, I have not.

Q. Mr. Montgomery calls my attention to the fact, Mr.
2535 Daniels, that the corporation tax act did not go into effect until the summer of 1911. Now, this report showed conditions in 1910 according to, as I understand your testimony is that right, freights that were earned by the steamers up to 1910? A. I think we made a report on our 1910 business. I am not positive, but it is my impression that we made at least three reports or four reports.

Q. When you testified the other day that the freight earned by the steamers up to 1910, you didn't think it was sufficient to make the business remunerative, you did not
2536 make that statement based upon any knowledge of the actual cost of transporting these commodities either to New York from Brazil or from Brazil ports to New York to the carrier, did you? A. Practically not, no.

Recess taken until 2.10 o'clock P. M.

AFTERNOON SESSION. 2537

APPEARANCES:

All counsel as before, and
MESSRS. SPOONER & COTTON, by John C. Spooner, Esq., for Paul Gottheil, et al.

LORENZO DANIELS recalled.

RE-DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Daniels, at page 945 of the record upon cross-examination you stated—you were asked the question what 2538
was the state of the freight market prior to 1910? Your answer was "very unremunerative to all tonnage employed." Now, what years had you in mind? A. I gave a little memorandum the other day of the rates for the different years and if you will allow me to refer to that——

Q. Yes, refer to it? A. For several years previous to 1910 those rates referred.

Q. You stated here further that they did for a period of eight years previous to 1910, that the freight market throughout the world had been below the cost of opera- 2539
tion? A. I think that is so.

Q. When you speak about the freight market you mean the market for tonnage, for charters? A. The market for charters; the value of the boats.

Q. There is no necessary relation, is there, between the market for tonnage, which would mean for tramps and boats of that class as I understand it, and what regular lines would charge for their services? A. Oh, quite so; the regular line rates are practically made by the open market rates. 2540

Q. You are quite sure about that? A. That is my experience.

Q. Now, isn't the case of tonnage rates or rates for charters fixed by open competition? A. Open market absolutely.

Q. Open competition? A. Open competition.

Q. And it varies according to the supply and demand of tramp tonnage, doesn't it? A. Yes.

Q. Now, if that is true how would that in any way affect what a liner operating regular steamers would charge for their services? A. Because they are influenced absolutely

2541 by what people can hire tramps or taking the basis of tramps; of course, there is a distinction between the very poor tramps and tramps of a little better quality; the market is practically on a parity and they can always be employed in the regular trade against the regular liners and it necessarily affects the rates because they can accept rates on the basis of their open market value.

Q. Isn't the usual method of fixing the rates for liners fixed upon a level not lower than that at which the owners would suppose they are able to carry the goods for for a
2542 long period at a profit? A. Not at all. The basis of operating in tonnage is the basis of a world's market of valued tonnage.

Q. Isn't one of the essentials that you have been speaking of with reference to these conference boats being that there was always the requisite number of boats commensurate with the business and regular sailings, one of the chief ingredients? A. That is when we undertake to carry on trade successfully.

Q. And one of the conditions of the market with reference
2543 to tramp steamers is that it is more or less uncertain and sporadic and sometimes at places where there is over tonnage and other times under tonnage? A. A question of supply and demand.

Q. And that fixes the value for that particular kind of traffic, does it not? A. That influences it.

Q. In the case of regular lines in the conference where they control, say, the major part of the trade in any particular service, don't they fix their rates without regard whatsoever to sporadic rates or value of the tonnage
2544 market? A. I do not consider they are independent of it at all.

Q. You don't think they are? A. No.

Q. Have you ever seen the report published by the Royal Commission on Shipping Rings printed for the Stationery Office of his Majesty's Government in London? A. I think likely I saw it when it came out several years ago.

Q. It was an exhaustive examination, was it not, into these conferences and combinations and their methods of operation and how it affected the carrying charges; generally speaking that is what it embraces? A. To my understanding it was a general investigation of the shipping conditions and conferences in trades.

Q. And it has been referred to by the shipping men pretty generally, hasn't it, since the report was made up? A. I think it has been more or less of a standard. 2545

Q. Now, isn't there one marked and essential difference between a tramp steamer and a boat on a regular line such as you speak of, in the case of the tramp in construction and everything else, it is what you might call an inexpensive and mediocre boat? A. As compared with the passenger boats, yes, it is a little different.

Q. But you think between the average tramp and the regular freight boats of the Lamport & Holt Line there would be very little difference? A. Very little difference in freighting values. 2546

Q. I am not asking that. Would not the cost of construction of the freight boat operated by the line, how would it compare generally speaking with that of the ordinary tramp? A. It is rather a wide subject. The very cheapest class of tramp handles the very cheapest class of cargo, such as coal and ores, and there is another class of tramp which is very much superior, and the superior tramp or freighting boat compares very favorably with a similar class of boats of the regular line. 2547

Q. But take the ordinary tramp service which is limited entirely to freightage, as I understand it, and the ordinary freight vessels employed by these lines, how do they compare on the average? A. The freight boats for the regular lines are a better class of tramp.

Q. They are a better class because they cost more to build, and, therefore, the amount of money invested or capital invested in them, is greater? A. They generally have a little better speed and better handling. 2548

Q. That is, in the ordinary tramp service the question of speed does not become quite so much of a factor as it would be in the regular freight boats of these regular lines? A. That is all adjusted in the market.

Q. I am coming to that, that is a fact, isn't it? A. Yes, on general lines.

Q. You mean to say that conceding that the tramp boat is an inferior boat, the cost of construction is less, the amount of capital invested in it is less than the average freight boat of the liners, that that boat would affect what is commonly offered upon the berth or tonnage, would effect the rates that the regular lines would charge for

2549 their service? A. It affects the rates for the rougher class of goods.

Q. But it would not for the better class? A. The better class of goods generally take the fastest service and pay a premium under any case.

Q. The point I want to make clear is that the better class generally do not patronize the tramps? A. The better class of freight goes on the regular lines.

Q. So that fixing the rate for the better class of goods, the tonnage market for tramps would not cut any figure?
2550 A. The better class of trade is always based on a premium over the rougher class. If the rougher class is very low the difference or the premium for the higher class is proportionately low.

Q. Then in order to get the rates for the better class of goods on the regular line we look to the tonnage market or, in other words, what tramps are offered at in competition and fix that as the basis charged for the liner, and then add some value to that, some price to that, because of quicker service and the better class of goods, is that the
2551 idea? A. Generally speaking that is it.

Q. Well then, if that is the method of determining rates, these rates thus determined would vary according as this tonnage market would vary from day to day? A. Not from day to day, but from period to period.

Q. Again getting back to the period, what period did you have in mind and how much time? A. That is not anything definite or regular. If the market has advanced generally the whole basis of freight is advanced.

Q. The testimony in this case is that all of the tariff
2552 rates from New York to Brazil were fixed abroad by the London conference; where did they get their information about the tonnage rates here in New York? A. It is world wide information.

Q. You mean every time tramps are offered here in this market it is made known to every place in the world? A. Practically, yes. To certain places in the world, say London and Hamburg.

Q. Do you furnish such information? A. No.

Q. Have you any record that will show the variation of tonnage here in New York in one of these years? A. The record I gave you taking the value of several years.

Q. Have you got it? A. I haven't a copy of it. 2553

Q. Have you put it in evidence? A. Yes.

Q. Now, Mr. Daniels, according as I understand your evidence given at page 949 on the question of the tonnage rates, say for 1910, two shillings seven and a half pence, what do you mean, that it is to be steady for the whole year? A. No, that was just a comparative period; I think the value of each one of those years.

Q. What about the balance of the year? A. It fluctuated.

Q. Do you mean to say you took all the tonnage that was offered at the rate and divided it by the number of months 2554
to get an average? A. No; we simply took the record of charters within, I think, October and November of the various years as the basis or standard.

Q. For instance, you turned to November in 1910 to see what the rate was? A. Yes, charter rate.

Q. And then in 1911 you took the same month and saw what it was then? A. Yes.

Q. Did you find in 1910, we will say, in the months that you took, that there was a fluctuation? A. I presume there was a fluctuation. 2555

Q. How did you happen to pick arbitrarily any particular time when it was two shillings seven and a half pence in 1910? A. I asked somebody to make up the rate at that time. I don't know how it was done.

Q. In your testimony so far as your own knowledge goes —you don't know so far as your own knowledge goes that it is correct, do you? A. I do know. I take it it is absolutely correct.

Q. What did you examine to see whether it was correct A. I personally did not examine anything.

Q. You assumed it was correct because you had some- 2556
body in your employ do it? A. From my general knowledge.

Q. And you don't know whether that two shillings seven and a half pence might apply for one day or just a short period of a month? A. Oh, no; I know that was the average or standard rate for that time.

Q. I understood you to say a moment ago that it fluctuated? A. It may have fluctuated slightly, but they were given to me as the current rates at the time.

Q. That same would apply to the rates that are given here in 1900 and 1911? A. The same thing, yes.

2557 Q. And 1909? A. (No answer.)

Q. Do you know whether or not those particular dates were picked out because that was the lowest for those respective years? A. I do not.

Q. You don't know that? A. No, I think they were average.

Q. Not for the year? A. No, for the particular time.

Q. The question is, Mr. Daniels, whether you know whether those particular months were chosen because they were the lowest? A. They generally were the highest
2558 months. Business was most active then. They were active months of the year.

Q. Do you know whether or not they were the lowest or the highest of your own knowledge? A. I don't know.

Q. Coming back to the question of the rates, had you ever read the findings by that commission that you referred to a moment ago? A. I think I did at the time; I don't remember them.

Q. Have you any recollection that among other things they had a finding as to the differences in stability of rates over a long period? A. I do not recollect.

2559 Q. At page 53 of this report that I am speaking of, I find among other things that they say as follows in the finding: "We have in paragraphs 122-6 pointed out the differences in the principles governing the rates respectively of the tramp and the liner. In the case of the former the rate is fixed by open competition and varies according to the supply of and demand for tramp tonnage. In the case of the liner the rates are lifted out of the sphere of open competition; they are fixed at a level not lower than that at which the ship owners suppose that
2560 it will pay them to carry the goods over a long period. And whereas the rate by tramp steamer does not generally vary with the nature of the article shipped the rate on each of the commodities shipped by a liner is fixed separately." Now, Mr. Daniels, do you think that that properly states the condition in the rates obtaining with reference to tramp or tonnage and that of a liner? A. I have a very high opinion of that report. I would like to introduce the whole of it if you will permit me.

Q. That is not my question. I asked if you thought that was a—— A. I haven't given the matter sufficient thought.

Q. You find that it varies some from your idea, don't 2561
you, that the question of the rates fixed by the liner is more or less dependent upon and related to the tonnage market? A. I must still adhere to my own opinion.

Q. In other words, you mean to say regardless of this report you are still of the same mind? A. Absolutely.

Q. Mr. Daniels, you have already stated that the rates fixed by the conference and the rates that you testified to as being reasonable and otherwise have no relation to any knowledge that you have of the cost of the carriage, have you not? A. I have no knowledge of the cost of the car- 2562
riage in detail

Q. Is it a fact that the freight rates in the open market usually have no relation to the cost of doing the business? A. The rates of the open market are entirely of supply and demand.

Q. Among other things that you said at page 946, that in 1911 the rates all over the world advanced very materially; where did you get that information? A. That is general information.

Q. What do you mean now by general information? A. 2563
I mean that is what I understand or am informed.

Q. Have you examined any authorized or accepted publication containing statistics as to what the rates were in other parts of the world at that period? A. I have seen them quoted, what the rates are in London and in the principal chartering centres of the world.

Q. And you say they continued to advance and reached a high level in 1912? A. That is my recollection.

Q. During that period of time do you know whether or not the average cost of doing business for these carriers had increased? A. From general information I under- 2564
stand it had.

Q. In all parts? A. From general information I understand the cost of doing business is constantly increasing.

Q. In what respect? A. In the respect of wages, port charges and general expenses.

Q. Do you mean to say that all over the world the port charges have increased? A. I do not mean to speak as generally as that, but the average I think is so accepted.

Q. Can you mention outside of certain points in Brazil since 1910 where there has been any increased port charge? A. I have not the details at hand.

2565 Q. Do you mean to say that the wages all over the world in this trade, the shipping trade, have increased? A. I think wages have increased.

Q. Where do you get that information? A. That is all from general information.

Q. Have you looked it up? Or is this simply what you have casually heard? A. What I heard.

Q. In what respect, we will say in the Brazil trade, have the wages in 1912 reached its highest increase over what it was in 1910 at its lowest? A. I am not able to give you
2566 particulars.

Q. At least you are certain of one thing, that rates all went up? A. Yes.

Q. Now, as a matter of fact, Mr. Daniels, is it not true that practically all over the world lines outside of the regular lines are practically in conference for all of the great and important shipping centres of the world? A. Taken from general information I think that is the trend of the business.

Q. So then when you speak that rates have gone up you mean by that that by reason of the fact that all the great
2567 shipping interests of the world are practically in conference everywhere that there is a uniform upward movement of rate? A. No, I should say the supply and demand of tonnage.

Q. But it is true that you have in mind that the increase you speak of that reached this high level in 1912, you are now referring to the trade which is practically controlled all over the world by the conferences? A. No, I think I was speaking entirely of the offer of open, free tonnage, tramp tonnage.

2568 Q. You think that has all gone up to-day, don't you? A. That all went up through the period that I mentioned when I testified.

Q. Do you know of any important avenue of commerce by water in any part of the world that is not in conference or has not been in conference since 1910? A. I am not able to answer that question in detail.

Q. All of the African trade is controlled by conference, isn't it? A. I don't know.

Q. Have the advances you speak of in the different parts of the world been uniform? A. That I am not able to answer you.

Q. Are you more or less familiar with about all the lines? 2569
A. Only in a very general way.

Q. Have all the lines that you know of advanced their rates? A. I could not answer you. I am not qualified to answer.

Q. As a matter of fact this general testimony that you give with reference to those advances in very casual knowledge of yours anyhow, isn't it? A. General knowledge.

Q. It has not come from studying statistics published by any Government or by the trade? A. It has come from 2570
general knowledge in the business.

Q. I say it has not come from the sources that I have spoken of? A. I am not sure whether I have used those sources or not, but from all kinds of sources.

Q. As a matter of fact, Mr. Daniels, isn't it true that while rates have been advanced since 1910 they have been advanced in zones and areas that have been practically controlled by conferences? A. I am not qualified to answer the question.

Q. Doesn't this general knowledge that you speak of and 2571
on which your rely inform you on that subject at all? A. My general information is the open market.

Q. How about the traffic that you are in outside of Brazil, how about that? A. It has all advanced.

Q. And all controlled by the conference, isn't it? A. Not all.

Q. Which ones are not? A. The Atlantic.

Q. You mean here in this country? A. Yes.

Q. How about Asiatic? A. I am not qualified to answer.

Q. Were not the Atlantic rates that you now speak of 2572
advanced in 1911 by a conference in London? A. The Atlantic rates?

Q. Yes? A. No, sir.

Q. In stating the advantages to the shipper and also the carrier with reference to the lines acting in conference, at page 941 you state in speaking about the requirements of the trade, you state at the top of page 941 that the trade has to be proportioned out and divided up after much careful consideration and study of the interests of the ship and the trade itself; now, is that proportioned or apportioned which you meant there? A. I do not quite get the point of the question.

2573 Q. On page 940 you said among other things: "Furthermore, all the trade require a large scope, the services at ports, and so forth; that one line is not able to furnish with satisfactory service to the trade unless other boats perform the onerous duties such as going to ports that are small and only require infrequent calls, other boats acting as express steamers for the main ports in making freight voyages as expeditiously as possible. How about out of the way ports? A. I think that comes under the same category; that would delay the steamers if they were bound
2574 for the main ports and had to make an intermediate call. The trade has to be proportioned out and divided up after much careful consideration and study of the interests of the ship and the trade itself." A. I meant by that that as the trade grew in volume it required the service divided into express service to the main ports; that is, that the same steamer could not go along and stop at all the ports and make a long voyage as it would necessarily do if the trade was a small one.

Q. Did you not mean by that that the trade would also be
2575 apportioned among the conferees? A. No, I did not.

Q. Mr. Daniels, have you had prepared the amounts of coffee importations on your boats for the years from 1907 down and including 1912? A. I gave them to Mr. Joyce.

Q. This is it, is it not, these six sheets? (Handing witness papers.) A. Yes, sir.

Q. I suppose they are practically correct? A. To the best of my knowledge.

Q. And made up to show the steamers and the date of the arrival—is the first column date of arrival or the date
2576 of sailing? A. I think it is date of arrival; I would not be sure.

Q. We will assume, subject to correction it is the date of arrival? A. Yes.

Q. The number of bags of coffee, and then the tons of rubber, tons of miscellaneous? A. Yes.

Q. That applies to each sheet? A. Yes.

Received in evidence as Petitioner's Exhibit 208.

Q. Mr. Daniels, I show you on one sheet of paper what purports to be copy of two cables, one from Busk & Jevons to Lamport & Holt and another from Lamport & Holt

to Busk & Jevons, two copies, one dated February 14th, 2577
1908 to Busk & Daniels from Lamport & Holt, another dated the 15th, the following day, from Busk & Jevons to Lamport & Holt, purporting to be, I suppose, a copy? A. Yes.

Q. And referred to in the letter of February 19th, 1908, Exhibit 38 in evidence, is that right? A. I think that is correct.

MR. BALDWIN: I offer it in evidence.

Marked Petitioner's Exhibits 209 and 210.

2578

Q. Mr. Daniels, the letter, Exhibit 38, of February 19th, 1908 from Busk & Jevons to Lamport & Holt, you speak in that on page three that they have now agreed on working rates for staples as per enclosed list. You will remember the other day I asked you if you would not see if you could not find that list? A. I was not able to find it.

Q. Have you got a letter from Lamport & Holt to Busk & Daniels of November 22nd, 1907, in reference to a liability of a common carrier that was being called for? A. I could not find that under the date. 2579

Q. You were also asked with reference to the statement that you were to get from Liverpool showing rebates paid by Lamport & Holt on business New York to Brazil shipped in 1907, during this alleged rate war testified to; have you written for that? A. We wrote for that.

Q. And the letter from the Prince Line to Lamport & Holt in 1909 withdrawing from the traffic agreement? A. We also wrote for that letter.

Q. Mr. Daniels, I show you letter of the date of the 14th of August, 1908, to Lamport & Holt, signed Busk & Jevons, 2580
and ask you if you received that letter? A. I accept that letter.

MR. BALDWIN: I offer the caption and the signature, and the paragraph entitled "Wharf," on pages two and three, and on page three the paragraph under the head of "McLaughlin," and on the last page the paragraph "Schedule of 'V' Boats."

Marked Petitioner's Exhibit 211.

Q. In this Exhibit 211, which is offered, you state that "where other lines are paying the maximum for each day,"

2581 this applying to the wharfage, "we have been able to procure for you a considerable advantage." What was that advantage? A. I do not recall without the letter.

Q. Have you any data available in your office that would refresh your memory on that? A. I might look it up. I haven't any data in my mind.

Q. Mr. Daniels, I show you a copy of letter addressed to Lamport & Holt by Busk & Jevons under date of January 14th, 1907. Do you remember sending that letter? A. If it is a copy from our books I accept it as correct.

2582 Q. I ask you to look at the last clause in that letter, just read it please.

(Witness reads.)

Q. It says among other things, the last clause, "We are following your instructions relative to the withdrawal of advertisements, taking cargo under special agreement only giving special rates to our friends" and so forth.

MR. BURLINGHAM: What is the date of that?

MR. BALDWIN: January 14th, 1907.

2583

Q. What instructions had you from your principal with reference to the withdrawal of advertisements? A. I don't recall in detail; I must have had some instructions.

Q. Do you remember what you did about it? A. I don't, no, sir.

Q. After you got that were you taking cargo then under special agreement only? A. I presume we followed instructions for the time.

Q. Were you giving special rates to your friends? A.

2584 That I could not answer. I do not recall.

Q. It further says in that clause that "We are proposing to discontinue collective action, under which we are contrary to the law, until we hear from your goodselves"; what does that refer to? A. I do not recall the instance that that letter was written about.

Q. What do you mean "By collective action"? A. I do not recall the instance at all.

Q. It ends up in the paragraph at your signature "We hardly think the laws can reach you personally." What do you mean by that? A. I don't recollect the instance.

Q. Mr. Daniels, in answer to one of Mr. Burlingham's

questions with reference to negotiations with Arbuckle 2585
Brothers, you were asked this question: "I want to know what position they took up and in words," and you answered "Why, their position consistently has been they wanted some advantage over all the other shippers." Now, what advantage did they want over other shippers? A. They wanted a little better terms.

Q. What do you mean, as to rates? A. In some instances as to rates and others as to methods of doing business.

Q. Which one connected with Arbuckle Brothers was it 2586
that made any application to you, or made any statement to you, that they wanted any advantage over any other shipper? A. The terms that they proposed——

Q. That is not my question. Who is the man? A. I spoke to Mr. Jamison of the firm.

Q. Did Mr. Jamison ever make any statement to you that he wanted any rates better than any other shippers were getting? A. The terms that he proposed always amounted to that.

Q. Did he ever state to you that he wanted any advan- 2587
tage over any other shipper—which any other shipper was not getting? A. The terms he proposed always included that.

Q. What terms did he propose? A. His last offer in 1911 I think is the date, was all terms the same as other shippers, with the exception that he should have certain full cargo privileges from the conference.

Q. Then if I understand it correctly it is substantially this: that he wanted to ship at the same rates on your regular boats for less than cargo quantities that any other shipper would ship, but he also wanted at the same time 2588
the privilege to charter boats if he had cargo sufficient over and above a certain amount at least, and there meant that service coincidental with the use of your boats? A. I think his offer to us was that we were to supply full cargo boats.

Q. Wasn't his offer also to include the fact that if he had an opportunity to charter boats for his own purposes, if he had a sufficient quantity of coffee to ship, that he had that privilege? A. I think that was mentioned in the earlier instances. The one I testified to, a direct offer, was the line was to furnish the boats.

2589 Q. The only advantage in view of what he said and those negotiations was that no other shipper was allowed to charter boats from the conference, any of the conference lines, and at the same time ship over the regular lines, is that it? A. No, we made no conditions specifically that excluded anybody from the same privilege. But, as he was the only one that could take advantage of that privilege it amounted to the same thing.

Q. Then the only advantage that he would get out of his proposition was that he was more advantageously situated
2590 in that he was a greater shipper and would be in a position to take advantage of charters when the occasion arose? A. No, they are not the largest shippers, but they go to the expense of storing and accumulating coffee and the other shippers in the trade do not do it.

Q. What I want to understand is this: did they during these negotiations with Mr. Jamison ask to have the privilege of shipping or making chartered engagements with independent lines and at the same time ship over your line? A. The last negotiations I recorded I do not so remember it.

2591 Q. Then the only real advantage that he wanted was to ship over your regular lines and then when the occasion arose to arrange with the conference to charter a boat? A. He wanted the privilege of accumulating cargo to the extent of full cargoes and then take a full cargo up upon the line.

Q. And in that respect that was the only advantage that he claimed or desired over any other shipper? A. Yes.

Q. And it was an advantage simply because he was one of the few who did business in that way and in such quan-
2592 tities that they could avail themselves of it? A. I think he wanted a specific rate named for those terms which would be advantageous to him.

Q. Did he mention what the rates were? A. The rates I gave you, 25c a bag.

Q. It was then the combination of the rates which he offered of 25c a bag and the fact that he was a large shipper and could accumulate coffee and when his own plans were ripe for it that he wanted the right to charter boats from the conference and send it up in that way? A. Or that they should give him a full cargo boat at that price.

Q. Otherwise there was no advantage that he wanted or

could have had at his suggestion above another shipper? 2593
A. That was the only stipulation, and that was an advantage.

Q. And that advantage simply grew out of the fact that he was, or Arbuckles were, large accumulators of coffee and large shippers of coffee and could take advantage of that situation? A. No, it entailed an expense to do so and was not on the same basis that the other people were doing their business or wanted to do business.

Q. Did the conference go so much into the advantages of the shippers down there that they would attempt to put 2594
all the shippers upon the same basis, is that the idea? A. The idea was not to discriminate to the detriment of anyone, or favor anyone.

Q. What concern had the line in the fact that a grower or producer of coffee was able to by reason of the magnitude of their business to accumulate coffee in large amounts and ship when it was advantageous to them? A. The offer that was made to the line appeared to the lines as a prejudice to other shippers and, consequently, so as not to prejudice others in favor of Messrs. Arbuckles it was declined. 2595

Q. Nothing said about the Arbuckles confining all their shipments to the conference lines. What other conditions? A. Well, their shipments to the line on their terms.

Q. And haven't you already suggested that you would like to have their business back and wished you would get all of their business? A. We have possibly suggested that to them when we met them at different times in the past number of years.

Q. And the fact that you had not been able to get together was because of the fact that they would not agree 2596
to confine all of their shipments to your line, that if they got an opportunity to charter a boat either from the conference lines or from an independent they would have the right to do so? A. They offered to confine all of their shipments to our line, an exclusive contract for all their shipments.

Q. Who made that offer? A. Mr. Jamison.

Q. Did Mr. Jamison or Mr. Humphrey ever tell you that they never would confine all of their shipments to any one line, and that if they found it to be advantageous to go out and charter a boat that they proposed to do that, and

2597 they considered it was up to you to carry their coffee at the same rate that you carried any other persons else? A. They made us an offer to give us their entire shipments, to sign a contract covering their entire shipments with us.

Q. When was that offer made? A. In 1911.

Q. Wasn't that offer due to the fact that you and Mr. Jamison and Mr. Humphrey had been negotiating for some time and they had offered shipments to your line, to the conference line, down there which you had declined to take and he came back with the final proposition that if you
2598 would give them the right to charter boats when the necessities of their trade required they would make an exclusive agreement with you, is that it? A. They did not reserve the right of any charter; they offered us their entire contract and entire shipments.

Q. Wasn't that final proposition made by Arbuckle subsequent to a demand made upon your line and the conference lines that they should take their freight the same as they took it from other interests? A. I don't know what influenced their offer; that is for them to say.

2599 Q. Had not they said that to you, one or the other or both, that they had offered coffees to you, to the conference lines, in April and they had refused to take it unless they made an exclusive agreement? A. That I cannot answer in so many words; I do not recall.

Q. You would not say no such statement was made by either one of the gentlemen, would you? A. I would not say yes or no. I do not recall.

Q. I am trying to get the substance as near as possible of the conversation that took place here? A. I am testifying they made an offer of all their business and coffee, and
2600 I have already given you the terms they made it on.

Q. After they made you this offer to give you all of their business at the cargo rate of 25 cents a bag did you come back with another proposition in which you agreed to give them that facility providing that they raised the price per bag? A. No, we did not offer them any condition other than the open conditions to all trade.

Q. Wasn't there some talk of 35 and 30 cents a bag to you? A. There was no offer authorized. We were not authorized at all.

Q. Did you make tentative offers of 35 or 30 cents a bag? A. No, I was not authorized to make any offer at all.

Q. Did you make it? A. No. 2601

Q. You did not mention 30 cents or 35 cents to Humphrey? A. I can't say what I mentioned in the conference, but not in any definite shape.

Q. Did Mr. Jamison tell you at one of the conversations they would make you an offer higher than they were paying on any other steamer that they then had on charter? A. That I do not recall.

Q. Mr. Daniels, during the course of your direct-examination you were asked by me for the list of steamers despatched by the various parties from Philadelphia and 2602
New York to various ports in Brazil; do you recollect that Mr. Gerhard who was present, volunteered to get that up? A. Yes.

Q. Is this the one that was prepared? (Handing witness papers.) A. Yes. I credit it to Mr. Gerhard.

MR. BALDWIN: I ask that it be marked for identification.

Marked Petitioner's Exhibit 212 for identification.

2603

RE-CROSS EXAMINATION by Mr. Burlingham:

Q. You said in answer to Mr. Baldwin a few moments ago that Messrs. Arbuckls & Company made various suggestions of conditions favorable to them, but in further testifying you confined yourself to the suggestions made in 1911. Will you now state what suggestions they had made prior to that time which you recollect?

MR. BALDWIN: What year, Mr. Burlingham?

MR. BURLINGHAM: Subsequent to 1908.

2604

A. We had several talks with them at different times in connection with their shipments, but I cannot remember the details sufficiently to testify on the record.

Q. Are you able to state any advantages or discriminations that they requested? A. The proposition that they made us in each case——

MR. BALDWIN: I object to that because it involves a conclusion and is immaterial.

MR. BURLINGHAM: I want to know what was asked, and what they said.

A. I could not say.

2605 Q. This morning you were asked by Mr. Baldwin with regard to certain articles mentioned in the tariff, particularly steel rails, certain sorts of iron and cement, and in several of his questions Mr. Baldwin referred to the published rate. Are these tariffs which he referred to published? A. They have been printed, but only for the use of the lines; not published.

Q. Is the rate the same on cement now, or was it the same in 1912 as in 1904? A. To the best of my recollection it was not.

2606 Q. Do you recall what the condition was? A. On rails or cement?

Q. Cement? A. I think the rate on cement was $4.20, and I think without being able to say positively that it was even lower than that, and our present engagements in 1912 were on the basis of $6, and I think $7.20.

Q. Now take up steel rails and give the same information? A. The rate in or about 1904 I think was as low as $3.50 a ton and $4, and then in 1912, between that period, it went to $6 and I think it went to $7.20.

2607 Q. In a letter which has been put in evidence, petitioner's Exhibit 57 from your firm of Busk & Jevons to Messrs. Lamport and Holt, dated the 30th of July, 1908, appeared the following statement: "We enclose a batch of rebates as per enclosed list," and again "We enclose a few rebates as per list." Will you tell us what rebates are referred to in this letter of July 30th, 1908? A. To the best of my recollection those were outward rebates that were in force in the period earlier than that, that were paid in London but were presented to us here at New York and checked up. The figures were checked for their ac-
2608 curacy and then forwarded to London for payment.

RE-CROSS EXAMINATION by Mr. Kirlin:

Q. Mr. Daniels, you were asked about the effect of chartering, or the chartering market for tonnage, especially tramp tonnage, on freight rates, and you differentiated between the different classes of tramps; aren't a great many of the vessels that trade in the Brazilian service vessels of character for which there is a demand for chartering? A. Yes.

Q. And, of course, as to such vessels, no owner apart from the conference would keep a vessel in fixed trade

unless the freight rates that he would earn in that trade would exceed the return he would get by chartering the vessel in the open market? 2609

MR. BALDWIN: I object to that as speculative and asking for the condition of mind of another, incompetent and immaterial.

A. I consider it very bad business to operate a steamer at a loss in any trade unless the advantages of the trade in the future would warrant it.

Q. Isn't it a well established and well understood fact that the freight rates of the world on package freight, cargo freight on liners is regulated by the market for the tramp tonnage? A. There is no question about it. 2610

Q. There is no conference on tramps anywhere? A. Not so far as I know.

Q. It is impossible to make one?

MR. BALDWIN: I object to that.

A. Very nearly.

Q. The tramp tonnage in volume is very much in excess of the liner tonnage, is it not? A. I cannot answer that accurately, but the tramp tonnage is all over the world and under the flag of many different nations and a very large amount. 2611

Q. You were asked by Mr. Baldwin whether it would not be of much advantage to shippers to have the lines in the Brazil trade operating on a competitive basis, entirely apart from any agreement or conference, at rates which would be renumerative to the shipowners, as it is to have the vessels operated as they are in conference. Is that a possible thing to do in a service like the Brazil service? 2612

MR. BALDWIN: I submit I recall no question put by me that embraced all of the features that Mr. Kirlin has suggested, and I object to the question upon the ground that it is immaterial and incompetent, and this witness cannot testify.

Q. Were you not asked by Mr. Baldwin whether it would not be of much advantage to the trade to have ships operated on a competitive basis at remunerative rates to shipowners, as it is to have them operated in conference at

2613 such rates? Do you remember his asking you a question of that kind yesterday? A. Something of that general character.

Q. And you stated in reply that your experience did not enable you to answer that question, did not fit you to answer that question? A. I should reply very much the same now; it is an impossible situation.

Q. Why is it an impossible situation?

MR BALDWIN: I object as purely speculative.

2614 A. Because in times of acute competition it is very rarely either a profitable service or a regular service, or anything that is standard. It is generally a very irregular business and generally unprofitable.

Q. Why is it that it is irregular and a helter-skelter service?

MR. BALDWIN: I object to this. It does not speak of any specific facts; asks for a mere conclusion, based upon no facts, incompetent and immaterial.

2615 A. When a service is not conducted on a fair return for the money invested it naturally is not stable or a service that is likely to live and progress, whereas, although rates may be low and just show a bare margin if economies can be introduced to contribute towards a profitable venture, it changes the aspect of the business entirely.

Q. Why is it that business cannot be conducted on a competitive basis and yet the rates kept up so that they will be remunerative to all parties in the field?

MR. BALDWIN: Same objection.

2616

A. I think the study of human nature will answer that.

Q. State on the record what your reasons are? A. I do not think any one line is willing to carry out a principle of dividing the business, the unprofitable part of the business under those conditions. They will only go in to develop the business in its detail, but at the same time provided they can look to a future where there will be a return on the investment and can develop a business of value.

Q. In other words, where the business is strictly competitive each party is trying to get the majority of the better paying stuff and leaving the other to his competitor,

is he not? A. That would be the natural result of that con- 2617
dition.

Q. And trying to size up shippers to his own line to deprive his competitors from getting the business? A. That is an absolute necessity in this business. I think the competitors are obliged to follow the same methods of self-preservation.

Q. And in order to secure the trade which the other man has been trying to secure what does he do about rates generally? A. There is an old saying that you cannot trade with your enemies but must necessarily trade with 2618
your friends, and to make friends you must give them advantages, if possible.

Q. And the result of this see-sawing between the competitors inevitably brings rates down below the remunerative basis? A. Not only brings rates below a remunerative basis, but it makes it almost impossible not to have discrimination in the trade.

Q. Is it possible in the face of competition, unrestricted competition, to maintain or have maintained a regular service in a trade like the trade between New York and 2619
Brazil? I don't mean by one line, but I mean by all the lines, so that there will be a service regular from the shipper's standpoint? A. I do not think that is possible in any trade that I know of without tariff.

Q. Explain why it is not? A. I think there is no way of preventing the lines from competing and striving against each other to secure freight one from the other, but that demoralization is sooner or later bound to result, and the weaker line is bound to go out of the business and give place to those that have been able to survive the conditions on account of their strength. 2620

Q. So that at first you get a curtailment of tonnage by the weaker competitors or competitor and finally an elimination of such competitors? A. That is generally it.

Q. And the concentration of the trade in the hands of the stronger line or lines? A. I think that has been the result of all such conditions.

Q. What is the next step in the development of that kind of competition? A. It comes into the hands of one line that practically operates it exclusively.

Q. Is it reasonably practicable for one line to supply a

2621 great trade like the trade from Brazil as at present conducted and developing? A. At the present day very few of the lines own boats of all the different characters. Some of the lines will be passenger lines and owing boats of a high character or a similar character, and other companies will have still a different character of boat, whereas, if you would develop a trade as a whole you will require boats that have a fair amount of speed, and the rougher cargoes are taken care of by boats that are not as expensive and are able to compete with the cheaper class
2622 of tonnage, such as tramp tonnage. You must have all kinds of boats in a complete trade to make it successful as a trade as a whole.

Q. In your opinion from the standpoint of the shipper is it more advantageous to have the service conducted as at present by a number of lines operating under comparatively stable rates and regularity of sailings than it would be to have the service conducted by a single line?

MR. BALDWIN: This is all taken under my objection.

2623

A. That again is a difficult position. Of course, if a single line had all this variety of boats they may require, they may handle the matter just as well as a combination of several lines to supply it. The question is more the completeness of the service, having boats that perform the fast mail and passenger service, and boats that perform the slower freight traffic.

Q. Then, practically, is there any such line at present capable of doing that to the great advantage of the shippers as is being done through the medium of conference? A.
2624 I do not know of any line, as I have testified.

Q. Has there ever been any such line in the trade between this country and Brazil? A. Not to my knowledge.

Q. Mr. Daniels, I think you said the rates to Brazil are less now than they were twenty years ago when the United States & Brazil Mail Steamship Company, an American concern, was operating the service there. Did you say that? A. I do not know that I testified on that; I do not recollect. The fact remains that the coffee rates at one time were a dollar a bag.

Q. That old Brazil line was a subsidized line, was it not? A. I think so.

Q. Are there any subsidized lines trading in the Brazil service at present? A. The Lloyd Brazileiro is subsidized by the Brazilian Government. 2625

Q. Any of the conference lines subsidized? A. None of the conference lines.

RE-RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Now, Mr. Daniels, if I understand your testimony in answer to Mr. Kirlin as to the effect of competition, it is that you summarize it by saying that if competition in any trade exists long enough and the competitors cut rates long enough and low enough that ultimately it will result in some of them at least going out of business and then that the trade will be handled by those that can survive, is that it? A. I think that is about it. 2626

Q. That is no new economic question, is it? A. Absolutely not.

Q. It applies to all trades, does it not? A. Yes.

Q. Of course, this assumption of yours is based upon the fact that out of necessity the competitors would continue, continuously rather, to cut rates so that there was no living profit in the business for them or for anybody; you are assuming that, aren't you? A. That is generally the result. 2627

Q. And you do not know of any particular characteristic of the marine carrying trade that would be any different than any other carrying trade in respect to the competition, do you? A. Yes, it is absolutely open. Take other trades and they generally have some confines or limits. The transportation trade is a world trade. The boat that is in China can be here only for the time it takes to proceed from China to the American port. 2628

Q. Then, with that exception the same economical situation would obtain, wouldn't it, on the railroads or any other carriers than a carrier by water? A. No; the railway is generally chartered. It has a right of way and has the protection of at least its own plant and establishment, and it takes a great many years of time, or wires, or charters to permit an opponent to come into the field. With the steamship company they can come in to-morrow.

Q. In other words, the ocean being free and ports free that any corporation or any person can engage in any trade that anybody else might engage in without any restrictions, that is the idea, isn't it? A. That is the idea.

2629 Q. And in that sense it is different from the carrier by land? A. Very much different.

Q. Of course, now you are speaking of railroad carriers, aren't you? A. You said that and I followed your idea.

Q. That is what you have in mind, railroad carriers? A. Just answering your citation.

Q. A steamship company that has a line going into a virgin field has to develop trade, doesn't it? A. Yes.

Q. And a railroad company going into a virgin field has to develop trade, doesn't it? A. Yes.

2630 Q. And the question of whether or not another corporation or person would go into the field—into the same field—in your judgment is much more limited in the case of the railroads than it would be in the case of a carrier by water; that is it, isn't it? A. The difference is in this respect; that when the railway develops its business the railroad has a business; when a steamship company develops the business they are open to attack in 24 hours.

Q. You know, don't you, that such lines as the New York Central had a developed business from New York to Buffalo for a great many years? A. By general knowledge, yes.

2631 Q. You know it by general knowledge? A. Yes.

Q. Do you mean to say that in 24 hours it would be possible for a real and serious competitor to develop in the New York trade with Brazil? A. Absolutely possible, and that is the way they have done it.

Q. And a regular line? A. Yes.

Q. And lines other than now in any of these conferences, these associated conferences? A. I should say yes.

Q. Isn't it one of the purposes of all of these associated conferences that these zones of activity should be parcelled

2632 out to certain companies and not invaded by the others, isn't that it? A. That is too general a question for me to answer.

Q. That is one of the questions which your general knowledge does not generally cover? A. I do not think they have been parcelled out; it has been a matter of development of years.

Q. Hasn't it been the result of all the conferences, so far as you know, in recent years at least, to practically apportion out the territory and business in some form or other between the conferees? A. I think it is too general a question for me to answer intelligently.

Q. You have already testified that almost all the great 2633
lines in the world are already in conference and have been, you remember that, don't you? A. That is correct.

Q. Don't you know generally that the purpose of those conferences, and the result of those conferences, was to apportion out territory among other things? A. I would not agree with you on some of the words.

Q. Well, have I got it substantially right? A. No; I think it is a matter of evolution. I do not think they parcel them out in just those words.

Q. You do not think they are subject matter of agree- 2634
ment of territory? A. No, I think the conference covers the territory it has as a whole.

Q. If the question of the business controlled or operated by these conference lines has been the result of evolution, how could it be changed in a period of twenty-four hours, as you suggested, or in a short period of time? A. The advent of an invading fleet.

Q. Are there any such lines that you know of that are not in the conference, or the principal world's traffic today in any such size that they could invade it and affect the business to any great extent? A. It is being done 2635
every day.

Q. Has it been done in the Brazil trade within your time? A. There have been several invasions.

Q. During 1907, when you were in competition, what invasion was there of the carrying trade between New York and Brazil that was not there before? A. I noticed that there was both an invasion and elimination.

Q. What was the invasion? Now let us get that and then we will take up elimination? A. I will say the entrance of the Hamburg-American and the Hamburg-South 2636
American into a business that they had never been in before.

Q. They were well known lines, weren't they, great lines? A. Yes.

Q. Had been in existence a great many years? A. Yes.

Q. Outside of the Hamburg-American lines what other lines injected themselves into that trade during that competitive period? A. I do not think it was a desirable period for anybody to come in. To my knowledge nobody came in in that period.

Q. Then as a matter of fact instead of the Hamburg-

2637 American Line invading that territory during the competitive period as a matter of fact they invaded the territory when there was a non-competitive period; that is to say, when the Prince Line and the Lamport & Holt Line were in conference? A. Invaded it when it was a conference period.

Q. Yes; and up to that time you say they had never been in that business, that is, the Hamburg Line? A. Not to my recollection.

Q. In 1907, the period you call the rate war period, then
2638 there was this competition between the Prince Line, the Hamburg-American Line and the German Line, wasn't it? A. Yes.

Q. And in that period had anybody else injected themselves into the competition of any note? A. I think the Tweedie Line were in existence then; also the Lloyd Brazileiro.

Q. Wasn't the Lloyd Brazileiro in existence before that? A. I think they injected themselves in earlier.

Q. That is when there was non-competition between the two lines that had that business, the Lamport & Holt Line
2639 and the Prince Line? A. There was the Tweedie Line.

Q. What is the Tweedie Line? A. If you will refer to that list of sailings you will find the sailings of those boats.

Q. I am asking you what the Tweedie Line was? A. It was a line operated by the Tweedie Trading Company into New York.

Q. And how many boats did they have? A. I think they chartered exclusively; sometimes as many as 24 or 30 boats under charter at one time.

2640 Q. And that was in 1907? A. And earlier.

Q. I am speaking now of this competitive period? A. They despatched some boats in 1907.

Q. Then as a matter of fact prior to this competition period in 1907 the Tweedie Line and the Lloyd Brazileiro were already in the service, weren't they? A. Yes.

Q. And was there any conference between the Lloyd Brazileiro and the Tweedie Line on the one side and the Lamport & Holt Line and the Prince Line as to rates prior to 1907? A. Not to my knowledge.

Q. And were they in competition? A. I think they were.

Q. How about the rates? Was there great competition on rates? A. I do not recall those particulars without refreshing my memory. 2641

Q. About that very drastic situation that you speak of up to 1907, when these four lines on one side and the other two lines, the Tweedie Line and the Lloyd Brazileiro, had that in any way resulted to the detriment of the shippers during that period of time, any more than when there was this competition? A. The service did not materialize or develop to the same extent that it developed later.

Q. What do you mean? You said on the average it had been progressive all over the world and the conditions with reference to the development of the Brazil trade was coincident with the development all over the world? A. So I said. 2642

Q. My question was, Mr. Daniels, whether during the time that the Tweedie line and the Lloyd Brazileiro were in business prior to 1907, what particular bad results fell upon the shippers during that period when there was this competition? A. My recollection—it is pretty far back—is simply that the boats of both the Tweedie Line and the Lloyd Brazileiro were not considered good service by any of the shippers, and that the better class of trade came to the boats that maintained the better service. 2643

Q. That was not my question. What bad results fell upon the shippers during that period of competition? A. They had a bad lot of boats in the trade. That is the only thing I can say of it.

Q. Well, those that took advantage of the Lamport & Holt and Prince Line, they were not affected by that, were they? A. They had a better class of boats but a more limited service. 2644

Q. Trade was smaller in those days, wasn't it? A. I presume it was smaller; the boats employed were smaller.

Q. You do not mean to say here that as far as those who shipped over the Lamport & Holt Line, that they were at all hurt by the competition that Lamport & Holt was in with the Tweedie Line and the Lloyd Brazileiro, do you? A. In a very broad sense.

Q. Just state it, how they were hurt? A. The better class of service does not develop as fast when it has a fungus on it like a bad service.

2645 Q. What was the fungus on it that hurt the shipper? A. I guess you are getting over my head, Mr. Baldwin.

Q. You have been over my head for so long this afternoon I am willing to get a little over myself. During 1907 when, as the result of the invasion of the German Line in the case, in what respect during that period did the competition hurt the shipper? A. Only be threatening to demoralize the service.

Q. Oh, it was a threat that hurt? A. The danger.

Q. In what respect did the danger hurt them? A. In the
2646 respect that if the lines that had been interested in the trade became crippled by costly competition they would naturally be unable to supply first class service.

Q. That is to say, the great German lines and the Lamport & Holt Line with the speedy boats and service, and the Prince line all happened to be hurt in some way, and consequently because they might be hurt in some way there was a present hurt to the shippers, is that it? A. I think that is very well put.

Q. They were getting the benefit during that particular period of lesser rates, weren't they? A. The rates were
2647 lower.

Q. And trade was developing and progressing during that period, wasn't it? A. I presume. I haven't the figures here, I presume it went on the same as ever.

Q. You testified, didn't you, before, that this progressive upbuilding of trade was gradual all over the world and during competition periods as well as non-competitive periods; you remember that? A. I presume it goes on.

Q. Do you seriously contend, Mr. Daniels, that not one of the lines in the Brazil trade, not one of them, can go in
2648 and supply the necessary service for this Brazil business, any one line? A. I do, yes, sir.

Q. Do you mean to say the Hamburg Line could not go in? A. I cannot say what it is possible for them to do if they had to.

Q. You were asked the possibility by Mr. Kirlin, and I am trying to ask you now in answer to that whether none of these lines could do it? A. It is possible for any line to do it, but it is improbable or unnatural.

Q. You were not asked by Mr. Kirlin whether it was possible, but whether they could do it?

MR. KIRLIN: I asked if it was practicable.

Q. Didn't your line carry rails during the year 1912 at 2649
$6 a ton at any time? A. In 1912 at $6?

Q. Yes, f.f.a.? A. I think we did. I am not positive but I think we did.

Q. What part of 1912 did it go to the higher rate you gave a moment ago in answer to Mr. Burlingham's question? A. You mean $7.20?

Q. Yes? A. I could not state without reference, but I think we got $7.20 for rails during that period. I am trying to refresh my memory.

Q. During the time of that Exhibit 3, which I call pub- 2650
lished, but which you call printed tariff—was in the course of print and before it was bound—was there a rate of $7 or more per ton by the conference lines for rails? A. I am unable to answer the question without some data.

MR. BALDWIN: I offer in evidence letter dated September 5th, 1907, addressed to James Knott, Prince Line, Limited, being Exhibit 44 for identification, and answer of Busk & Jevons, and I offer that part beginning on page 2, bottom line, beginning, "Regarding rebates," and ending in the middle of 2651
the line "Do so," on the next page.

MR. KIRLIN: We object to this as immaterial, irrelevant, incompetent, relating to matters anterior to the time specified in the petition.

MR. BURLINGHAM: I make the same objection.

Received as Petitioner's Exhibit 44.

By Mr. Kirlin:

Q. Look at that, Mr. Daniels, the part which begins regarding rebates, look at the date of the letter, and state whether that has anything to do with any matter arising 2652
out of the agreement of February 14, 1908, marked Petitioner's Exhibit 1 of the Petition?

MR. BALDWIN: I object. It speaks for itself and conclusion of the witness is not competent.

A. It antedates that date and contains matters antedating it entirely.

Q. An entirely different condition? A. Entirely different.

2653 By Mr. Burlingham:

Q. You spoke of the Tweedie Line, was that operated by the Tweedie Trading Company with chartered ships? A. So I remember.

Q. All chartered ships? A. As I remember it.

Q. What is necessary to establish a line of chartered ships in any trade such as this Brazil trade? A. The only necessity is taking contracts for cargo and then making the charter of the tonnage to carry out your line.

Q. Isn't it a fact that if a man has the price of a month's
2654 hire he can start a line?

MR. BALDWIN: I will object to that as immaterial, incompetent and irrelevant, and asking for a conclusion.

A. It has so proved itself in a number of instances in the Brazil trade.

Q. Hasn't that been true with the Tweedie Line? A. It was so reported at the time, yes, sir.

2655 MR. BALDWIN: I ask to have it stricken out as not evidence.

Q. Are or are not the conference lines open to attack by chartered line steamers like the Tweedie Line?

MR. BALDWIN: Same objection; immaterial, incompetent and irrelevant; speculative.

A. They are not only open to them but they exist to-day in the Brazil trade.

2656 Q. And are they more or less open to them in bad times than in good times?

MR. BALDWIN: Same objection.

A. They are more open to them when tonnage is cheap than they are when tonnage is high.

Q. I suppose this large number of tramps roams the ocean to find trade where they can get it best, doesn't it? A. They generally do, yes.

Q. And they flock to the places where liners have established themselves and are pecularily susceptible to attack, isn't that true?

MR. BALDWIN: I object as so highly speculative 2657
and incompetent

Q. Is it not? A. It is true.

Q. Is it any more difficult for an established line to withdraw their vessels where they have their trade than it is for tramps to change shift from one trade to another?

MR. BALDWIN: Same objection.

A. There is an open established market for tramps up to a certain time, and when you go from that period to a 2658
higher class of ships, ships built especially for a trade, or for passenger or fast service the market is very limited.

Q. Do I understand you to deny that a company with limitless financial ability can put its whole powers into the development of a trade and take care of it? A. Most decidedly not; it is all a question of finances.

Q. The rate war that existed in 1907 apparently lasted only a few months, is that so? A. That is correct.

Q. And has the experience of the few months disproved the proposition which you have laid down here repeatedly 2659
in your direct and cross-examination that ultimately unrestricted competition will result in elimination?

MR. BALDWIN: Objected to as immaterial, incompetent and irrelevant, speculative, conclusive.

A. Naturally a condition that is quickly remedied does not become chronic.

By Mr. Baldwin:

Q. During the time when the roaming tramps have been 2660
seeking the port that is more vulnerable, have they been flocking to the port of New York to the great detriment of the conference lines?

MR. BURLINGHAM: When?

MR. BALDWIN: Since 1908.

A. Any time they flock is not generally to our advantage.

Q. Have they been flocking here since 1908 to a great extent? A. They are always more or less at the port of New York or on the immediate coast.

Q. And are they here in New York because this [illegible]

2661 particularly weak spot for the conference? A. I think that is not the sole reason that brings them here.

Q. Other business besides the weakness of the conference? A. The business of the port brings them here, yes.

Q. As a matter of fact, Mr. Daniels, the carriers unattached usually go to where they think they can get cargoes at rates satisfactory to them, isn't that the economic condition? A. That is the express condition.

Q. So that it is not a question of whether or not the carriers who have the control or dominance in any trade are
2662 weak or not that really brings tramps to such particular port? A. No; if the trade was on a high enough basis to make it an inducement to the tramps to come that would be an inducement to them to come.

Q. It is a purely commercial question, isn't it? A. A purely commercial question, yes, sir.

Hearing adjourned to Monday, April 28, 1913, at 10.30 o'clock A. M.

New York, April 28th, 1913.

2663

By consent hearing adjourned subject to call.

New York, May 14th, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER,
2664 by Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, et al.

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., M. W. Maclay, Jr. Esq., for the Prince Line, et al.

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gottheil, et al.

JOSEPH PURCELL recalled.

DIRECT EXAMINATION by Mr. Montgomery:

Q. I call you attention, Mr. Purcell, to this Exhibit 200 in the record; you have seen that before? A. Yes.

Q. It has been in your office, at the office of Hard & Rand? 2665
A. Yes. If you got it from there naturally it was there.

Q. That is the one, is it not, that Mr. Johnson brought up at our request? A. I did not see it, Mr. Montgomery. If Mr. Johnson handed it to you it is correct. I have seen one like it, I know, a copy of it.

Q. In this Exhibit I call your attention to clause three that reads as follows: "That the rate to the United States cannot be more than ten cents and five per cent. primage per bag in excess of that at which coffee can be shipped, and actually received at the time in question by 2666
outside steamers with a minimum rate of thirty cents and five per cent. primage." Do you know whether or not since this document was printed and circulated the rates charged by the lines from Rio and Victoria are different from the rates to Santos? A. Yes, that is right. There is a separate one for Santos.

MR. BURLINGHAM: What is the date of it?

THE WITNESS: August 26th, 1909, is the date of that document.

2667

Q. Do you know whether since August 26th, 1909, the rate charged by the conference line for the carriage of coffee to the United States have ever been more than ten cents and five per cent. primage per bag in excess of that at which coffee could be shipped by outside steamers? A. It has not been to my knowledge, excepting by the Lloyd Brazileiro.

Q. Excepting by the Lloyd Brazileiro? A. Yes; if it had we would have availed of it. If it had been more than ten cents we would have availed of the opportunity.

2668

Q. That is to say, you would have taken advantage of clause six of the agreement? A. Yes.

Q. I call your attention to clause six? A. The one you read?

Q. No, clause three provides that the lines shall not charge more than ten cents and five per cent. in excess of the rates of outside steamers; clause six appears to say what the shipper may do in case the lines do exceed that rate? A. I don't see how that conflicts with clause six in any way.

Q. I don't see that it does either.

2669 MR. BURLINGHAM: Why should he go ahead and construe this written instrument in this way?

MR. MONTGOMERY: I will come to that in a minute. I think it has been construed; that is what I want to bring out.

MR. BURLINGHAM: He is not qualified to do more.

MR. BALDWIN: He can state what their action has been and whether it is ambiguous or otherwise.

MR. BURLINGHAM: Let him do that, but let him not say what the instrument means.

2670 Q. Clause six, Mr. Purcell, purports to state what may be done by the shipper in case the conference lines do exceed outside rates by more than ten cents and five per cent., does it not? A. No, I think clause six states what the shipper might do in case they cannot provide sufficient tonnage.

Q. Had those rates——

MR. BURLINGHAM: I object to the witness stating what clause six means and ask that it be stricken
2671 out.

Q. Now, Mr. Purcell, on December 5th you sent a cablegram—Hard & Rand sent a cablegram to their Rio house?

MR. BURLINGHAM: December 5th of last year?

MR. MONTGOMERY: December 5th, 1912, Exhibit 201.

Q. Reading as follows: "Have firm offer subject to reply two P. M. to-morrow twenty-five thousand at twenty-
2672 six net each *Purus, Tapajoz* to load at Santos, Rio and Victoria." Do you remember that cable? A. Yes.

Q. Did you send that yourself? A. No, I did not.

Q. But you knew about it at the time? A. I knew about it at the time.

Q. What steamers are the *Purus* and *Tapajoz?* A. Lloyd Brazileiro.

Q. The rate there is I see twenty-six cents net; do you remember what the conference rate was on that date? A. Fifty cents and five per cent. per bag.

Q. At that time you were complaining, both your house here and your house at Rio, were complaining to the

conference lines of the increase in the rates, were you not? 2673
A. Yes.

Q. And you were pointing out to them that you had the right to ship by—that there was a great difference between their rates and the rates of outside steamers, were you not? A. No, we did not; we were not able to prove that.

Q. What was the information that you had? A. About what?

Q. About the rates that led you to make these complaints? A. When they advanced it from forty to fifty 2674
cents we thought that it should have remained at forty, but when we entered the market to charter we found that fifty was all right.

Q. In what sense do you mean that fifty was all right? A. That we could not charter at a rate low enough to make them stick at forty.

Q. You could not charter? A. Could not charter; and there were no outside steamers that we could ship by, that we wanted to ship by.

Q. How about the *Tapajoz* and *Purus*, you evidently 2675
thought of shipping by them; you sent this information down to them? A. We sent it as market information for our Brazil house, to bring as much weight to bear on keeping the forty cent rate as possible.

Q. Wasn't the information actually sent, Mr. Purcell, for the purpose of showing the conference lines that under this agreement, Exhibit 200, you had the right to ship by the *Tapajoz* or the *Purus* from Santos and from Rio and Victoria at twenty-six cents a bag, there being more than ten cents and five per cent. difference between that rate and the rate the conference lines were then charging; wasn't 2676
that the purpose of sending this cablegram? A. No, the purpose was to let them know that there were vessels that were willing to take coffee at a lower rate than forty cents.

Q. And more than ten cents and five per cent. lower than forty cents? A. Yes.

Q. You have not with you here a copy, or the original, of the cablegram which was sent by you on December 9th to Lamport & Holt? A. I haven't got it, no.

Q. I call your attention to what purports to be the record of the hearing before the Committee on Merchant Marine and Fisheries and ask you if Exhibit 25 of those hear-

2677 ings, on page 86, is a true copy of the cablegram that you sent on that date to Lamport & Holt? A. Exhibit 22 you say?

Q. Exhibit 25 towards the bottom of the page? A. Yes, I recollect those cables.

Q. That is a true copy, is it? A. Any copy we give you is a true one.

By Mr. Montgomery:

I will read that into the record; it is very short. The
2678 cablegram reads——

Mr. Kirlin: Let me see it; I may want to object to it. (After examination.) I don't see what that has to do with the case.

Mr. Montgomery: (Reading.) "Lamport & Holt, Liverpool. December 9, 1912. *Cervantes* brings copies of letters between Hard, Rand, Santos and conference lines which agent sent you rely on you conceding justice their claims have firm offer twenty-five thousand *Tapajoz* twenty-six net three
2679 ports."

Q. Now, that cablegram was sent from your office here? A. Yes.

Q. And do you know what the three ports were? A. Yes, Santos, Rio and Victoria.

Q. Wasn't the purpose of that, Mr. Purcell, to show that you were entitled to accept this lower rate, it being more than ten cents and five per cent. lower than the conference rate at the time? A. Yes.

Q. You were urging that, weren't you? A. We were
2680 urging it. We could have accepted it if we wanted to.

Q. I call your attention to what purports to be the reply of Lamport & Holt, which is right below that; it is the reply that you furnished the Committee, isn't it? A. Yes.

Q. And it is correct? A. Yes.

Q. It is addressed to Hard & Rand, New York, wasn't it, this cablegram? A. Yes.

Q. And from Lamport & Holt? A. By Lamport & Holt from either Liverpool or London, I don't recollect which; Liverpool, probably.

Mr. Montgomery: It reads: "Sorry but with all due respect consider claims your Santos firm most

unreasonable and that agents' lines acted more liberally having regard terms agreement offer *Tapajoz* does not constitute charter rate according agreement." 2681

Q. That was their reply, was it not? A. Yes.

Q. And I ask you to tell me what the meaning of the last sentence is "Offer *Tapajoz* does not constitute charter rate according agreement"? A. I could not tell you; haven't any idea of it.

Q. Doesn't it mean, Mr. Purcell, and wasn't the position of the lines at that time, that the twenty-six cents being a rate made by an outside line for less than cargo lots, wasn't the rate—— A. You are wrong there; twenty-six cents is a chartered rate not less than cargo lots. Their rates for less than that is thirty-two cents a bag. That is a charter rate. Smaller quantities, higher price. That states clearly charter. 2682

Q. That was a charter offer? A. Yes, that means the whole capacity of the vessel.

Q. Just in what respect did not it constitute a charter rate according to agreement? A. I don't know. Mr. Cook sent that telegram from Liverpool I suppose. He could explain that; I could not. 2683

Q. Have you any other correspondence with the conference lines or with anybody connected with the conference lines that would throw any light upon the meaning of that sentence? A. Not at all; you have every bit of correspondence we have.

Q. You think that is the last cable that came to you at that time in reference to the matter? A. No, I think you have some since. We gave you all that were here since. 2684

Q. I do not recall any cables of a later date than that? A. You issued a call for all papers and we carried out that call.

Q. That was, however, before this—— A. No, it was after I think, wasn't it? Or was it before? I guess it was. You have everything up to that time and I think since then you have asked for further documents which we gave you. To the best of my knowledge and belief that is about the last cable we had from them.

Q. What was done about it; did you avail yourself of the offer of the *Tapajoz* and *Purus?* A. No.

2685 Q. And ship by them? A. No; the charter did not suit us.

Q. Why? A. Because we did not have the coffee to ship at the time those vessels were ready to go.

Q. Do you know what the capacity of the *Tapajoz* is? A. I do not.

Q. When you charter a boat ordinarily, Mr. Purcell, you do not name the amount of cargo you are going to carry; you charter the boat, don't you? A. Yes, the vessel has a certain capacity and we try to charter it for the least number of bags that is possible, with the privilege of filling
2686 her, at the charter rate. If a boat carries 100,000 bags and we could charter for 50,000, we will do it.

Q. Do you call that a charter? A. Yes, that is a charter. They fix the limit of bags.

Q. You mean then that if the capacity of the *Tapajoz* was greater than 25,000 bags—— A. Yes.

Q. You would only pay them for the 25,000 bags at twenty-six cents, but if you would be able to fill up the boat yourselves—— A. No, you have it wrong.

Q. Just what do you mean? A. I mean if the *Tapajoz* had a capacity of 50,000 bags and we wanted to enter into
2687 correspondence to charter that boat and we didn't want to be bound to ship more than 25,000 we would make that the quantity, 25,000, say we will give you twenty-six cents for 25,000; if we use 50,000 we will pay you twenty-six cents for the balance.

Q. And no other cargo would go on the boat but yours? A. We would not want to guarantee to have to ship 50,000 bags when we could only ship 25,000 and pay the freight on the 50,000, naturally, so you can see the necessity of limiting it to a low quantity, can't you?

2688 Q. Just what kind of contract would you make with them, Mr. Purcell; did it involve your sending 25,000 bags or more at twenty-six cents a bag? A. Yes.

Q. And chartering the steamer? A. It would be a charter with the understanding that we did not have to ship more than 25,000 bags in it, but that we could ship to the fullest capacity if it was 50,000 and pay them the regular rate.

Q. And in case you did not avail yourselves of the remaining 25,000 bags' space? A. There was no penalty.

Q. That would go empty or would that be available for

the owner to fill? A. No, under the charter they could not 2689
fill in the space at all if we chartered the vessel.

Q. That is the owner? A. The owner of the vessel, yes.

Q. But you could? A. Yes, we could if we shipped less than 25,000 bags, the quantity we agreed to ship, we would have to pay dead freight on the difference at the rate of twenty-six cents a bag.

Q. Do you know who conducted the negotiations here with the owners of the *Tapajoz*—that would be the Lloyd Brazileiro, wouldn't it? A. Yes.

Q. Do you know who in your firm conducted the negotia- 2690
tions for that boat? A. Those are the only negotiations we conducted, is that cable.

Q. That is the one between the Lloyd Brazileiro and Hard & Rand. I mean who in your firm talked with the Lloyd Brazileiro people about the *Tapajoz* on this voyage? A. Our cable clerk asked them to give them a firm offer in hand.

Q. At whose direction did he ask that? A. At Mr. McCreary's and mine.

Q. A firm offer; do you mean by that a specific offer? 2691
A. Yes, one that would be twenty-four or forty-eight hours time to accept.

Q. By firm you mean it cannot be withdrawn within that limit? A. Yes.

Q. Who is your cable clerk? A. Mr. Fern. You might just as well call the office boy as call him; he is simply a mouth piece of Mr. McCreary and myself.

Q. Do you know who he talked with in the Lloyd Brazileiro? A. No, he called up somebody in the Lloyd Brazileiro.

Q. You think that is all that was done? A. That was all 2692
that was done, and I was there when it was transacted over the telephone.

Q. Do you remember what was said? A. I remember he got a firm offer.

Q. Do you remember what he asked? A. Asked if we could have a firm offer for twenty-six cents for, I don't know whether twenty-four or forty-eight hours, and he got it, and on that reply the cable was sent.

Q. You did not ask the firm offer for a charter rate, you asked a firm offer for 25,000 bags? A. That is a charter rate, 25,000. We wanted to charter the boat.

2693 Q. What makes it a charter rate; did you tell them you wanted to charter the boat; what custom of the trade or what is there that would indicate to the Lloyd Brazileiro that an enquiry of the sort meant charter? A. This was not a charter; it was 25,000 bags.

Q. And twenty-six cents a bag? A. Yes.

Q. That was not a charter? A. Yes, was not a charter.

Q. Now then, I ask you to tell me again if the last sentence in the cable of December 10th, from Lamport & Holt to Hard & Rand, which reads this way: "Offer *Tapajoz*
2694 does not constitute charter rate according agreement" does not mean that your offer of twenty-six cents for 25,000 bags cannot be accepted by you on this outside line because the agreement only permits you to charter at a lower rate, but not to ship less than a cargo; isn't that the meaning of that sentence? A. I don't know.

Q. Read the cablegram again? A. I have read it, and I do not understand it at all.

Q. Well, at any rate—— A. Because that agreement there says we don't have to charter in Rio and Victoria;
2695 we can ship by any other outside line a thousand bags, 500, a hundred bags.

Q. The agreement says that? A. Yes.

Q. However, this so-called agreement was never signed, was it? A. It did not have to be signed.

Q. What do you mean by that; why didn't it have to be signed? A. It is a statement by the companies if we do certain things they would do certain things for us, and we were doing certain things for the companies and they did the certain things for us, paid the rebate.

2696 Q. However, it was not a signed agreement? A. No. If we had broken the agreement they would not have paid us the rebate. An agreement of that kind does not have to be signed.

Q. Wasn't the purpose of this cablegram to indicate to you that they would regard your taking less than a full cargo on an outside steamer as a breach of the agreement? A. According to this Mr. Cook thought the *Tapajoz* was not——

Q. That it would not be right under this agreement? A. Yes, that is what he thought.

Q. And you did not ship by it? A. No. If we thought

we were right and wanted to ship by the *Tapajoz* we would 2697
probably have shipped by her and then contested his cable.

Q. But it would have meant a contest between yourselves and the conference lines? A. It would.

Q. And they held at that time a large amount of money in deferred rebates due your firm, didn't they? A. I suppose they did, they always have.

Q. They always do, don't they? A. Yes.

Q. And you never have availed yourselves, although the rates have frequently been more than ten cents and five per cent. per bag less than—— A. Not frequently. 2698

Q. Well, they have at times, haven't they? A. You are only speaking now of the Lloyd Brazileiro, by which line we would not ship.

Q. You would not? A. No, not at ten cents a bag.

Q. Why not? A. For good reasons of our own we would not. You know the reason yourself.

MR. MONTGOMERY: I ask to have that stricken out. I do not know of any reason why anybody should not ship by the Lloyd Brazileiro.

2699

Q. Then your request through your cable clerk there was not made in good faith at all; it was merely for the purpose of having this offer to urge to the conference lines? A. What do you mean by not in good faith?

Q. I mean that you just said that you would not ship by the Lloyd Brazileiro under any circumstances at ten cents? A. Well, it is good faith to get a firm offer and send it down to a firm, isn't it? We did that; we got the firm offer and passed it along and got their expression of opinion.

Q. I mean it was not in good faith in the sense that you 2700
expected to avail yourselves of it if you got it? A. We wanted it for pressure on the conference lines.

MR. KIRLIN: It was a business move I suppose to try to improve the other rates, wasn't it?

THE WITNESS: Naturally.

Q. Now, Mr. Purcell, you testified before the Alexander Committee in regard to what these agreements provided, and I ask you to refresh your recollection by reading your testimony on page 67, commencing with the

2701 words "Does your contract allow you to get shipments at more than ten cents per bag" and so forth. You remember that testimony? A. (After reading.) I think it is a little garbled myself.

Q. It is not absolutely clear, but if you will read over that next page you will see I think what I want to get at. A. There are misstatements here.

Q. I am just asking you to refresh your recollection about the matter you were testifying to? A. There is a misstatement right there. (Indicating.)

2702 Q. This was on January 7th, wasn't it, 1912, that you testified? A. I don't recollect the date.

Q. About that time? A. I don't recollect that.

Q. I merely ask you to look that over? A. If there is any particular one you want——

Q. I merely ask you to read that portion of your testimony down to the question that Mr. Steven's asked you: "Your agreement does not permit you to ship 100 bags at ten cents"? And your reply "No, we would have to charter a vessel, but I do not supose we could get any vessel to charter for less than 40,000 bags." Now, I want you to

2703 look that over and refresh your recollection—by the way, that was shortly after—this correspondence passed between yourselves and the conference lines, wasn't it, this correspondence began apparently about December 5th, 1912, and that testimony was about a month later, or about the 5th or 6th of January, 1913, wasn't it? A. I do not recollect the date. Here it says January 7th, 1913.

Q. So that was just a little after you had had these questions up with the conference lines? A. What do you want me to refresh my memory on?

2704 Q. I want you to refresh your recollection as to what your understanding was at that time, shortly after you had had the whole question up with the lines as to the construction of these agreements, and as to whether you are permitted to charter generally or whether you are permitted under these agreements Exhibit 200. to—— A. I can answer that right now. We can ship any quantity by an outside line that is more than ten cents below the charter rate; the agreement says so. I did not realize that when I was making the statement here in Washington.

Q. But the conference lines apparently took the other

position, didn't they, in their cablegram? A. They were talking about Santos; not Rio and Victoria. 2705

Q. That offer was for three ports, wasn't it? A. Yes.

Q. 25,000 bags from three ports? A. They were talking about Santos, and you are talking about Rio and Victoria now.

Q. I call your attention to Exhibit 123, Supplementary Notice to Shippers From Santos, and ask you if that is now in force; is that the agreement that is in force in regard to the—— A. I have not finished it yet. (After finishing reading.) Yes, that is in force.

Q. I call your attention to this language in clause five: "In case the combined lines fail to supply the available tonnage required at the above rates of freight by their own or chartered steamers within a reasonable time, say fourteen days from the date of request, or if their current rate be not in accordance with what is stipulated in clause three and four of this agreement, the exporters shall be at liberty to charter or ship in an outside vessel or vessels or parts thereof, without prejudice to their right to rebate under this agreement"? A. Let me see clause three and four. 2706 2707

Q. Isn't that the same? A. (After reading.) I don't know that I can answer any questions on that point.

Q. That appears to be the same general effect as a similar clause in Rio, isn't it? A. But in my conversation with Johnson when he was here——

Q. Wait a minute. Never mind about any conversation with Mr. Johnson. Anything the conference lines' people may have—— A. I cannot say anythng you want me to say. I will say it my own way or not at all.

Q. That's all right, but if you recall anything that any of the conference lines or their representatives ever said to you in regard to the construction of these clauses in the agreement, what they would do under them, that I would be very glad to have you state, but what Mr. Johnson may have said—— A. He is the man who makes the arrangements. 2708

Q. Never mind, that is all right. I am asking you for your understanding of this construction? A. I have no information on that subject at all.

Q. The construction of these clauses; then you cannot point out any differences between the Santos agreement

2709 and the Rio and Victoria agreement? A. As it is written there they seem to be similar, but I don't know that they are correct.

Q. I understood you to say this Exhibit 123 is in the— A. You have copy; I don't know that that is what I sent you at all.

Q. It says on the copy, "Received from Hard & Rand," doesn't it? A. Yes, that looks like it was all right.

Q. Then you know pretty well, don't you, that that is what you gave us? A. Yes, I am not deaf though.

2710 Q. That is what you gave us, is it? A. Yes.

Q. And it is correct and in force? A. Correct. I cannot say whether it is in force or not; it may have been changed in the last twenty-four hours.

Q. But up to twenty-four hours ago it was in force? A. It was in force so far as I know.

Q. And those agreements are the ones that are considered in the cablegram that contains the sentence, "Offer *Tapajoz* does not constitute charter rate according agreement"? A. Those must be the agreements referred to, aren't they?

Q. Do you know of any other agreement? A. No.

2711 Q. That language could possibly refer to? A. No.

CROSS-EXAMINATION by Mr. Kirlin:

Q. Mr. Purcell, since this agreement No. 200—Exhibit 200—went into effect, has there been any failure on the part of the lines to supply adequate tonnage for coffee? A. No.

Q. So that you had no occasion to exercise the option that you had under the agreement—— A. For lack of tonnage? No.

2712 Q. Of taking measures for your own protection on account of lack of tonnage? A. No, none at all.

Q. And has there been any other opportunity of shipping on outside steamers at rates amounting to ten cents and five per cent. primage per bag less than the conference rates, except by the Lloyd Brazileiro? A. None.

Q. And for business reasons of your own you have not cared to avail yourself of the opportunity, if there has been any, by shipping on that line? A. Yes, sir.

Q. So I take it all of this correspondence with Lamport & Holt was merely part of the usual business strategy that is ordinarily resorted to between merchants and their cus-

tomers when there is a difference about prices? A. It 2713
was the best rate we could give them at the time; we tried other sources and could not get it.

Q. The answer to my question is—— A. I will answer it yes.

Q. Is there anything unusual when merchants and customers are dickering about the price to get a bid from somebody else, even though you may not intend to avail yourself of it, and use it as a lever to bring your customer to your terms? A. No, it is not an unusual procedure to do that; it is a bona fide offer.

Q. It is not regarded as any lack of good faith, is it, in 2714
business circles? A. No.

Q. To make the best bargain you can on any legitimate terms? A. Yes.

Q. Had the question ever come up before these cables were exchanged as to whether the privilege accorded by clause six in Exhibit 200 and clause five in Exhibit 123 was understood between the parties to relate to entire charters? A. I will have to read those clauses over again to be able to answer that question properly.

Q. They seem to be both alike? A. Your question is? 2715

Q. Has a question ever come up as to whether the construction the parties themselves adopted that it was, if you did charter, was not limited to charters prior to the exchange of these cables? A. No, there has never been an occasion that I can recollect of come up where there has been any lack of tonnage on the part of the conference lines. That is what you mean, isn't it?

Q. Yes? A. Yes.

Q. The question had never come up before? A. No.

MR. MONTGOMERY: He said there never had been 2716
any lack of tonnage.

THE WITNESS: That is what the clause says, lack of tonnage.

MR. MONTGOMERY: Lack of tonnage at certain rates, is that what you mean?

THE WITNESS: Lack of tonnage at any rate.

Q. In your previous business experience when you had made shipments outside the associated lines operating from Brazil has it not been usual for you to do it by chartering the whole ship? A. Yes.

2717 Q. That practice I take it was known to all shippers who had been trading in years past in that trade? A. Of chartering?

Q. Yes, that you had when you went outside of the lines and done so—by making independent charters? A. Yes.

MR. MONTGOMERY: I object to what the custom was unless there is some suggestion of when this custom existed.

MR. KIRLIN: I said previous to here.

MR. MONTGOMERY: Previous to the time of the
2718 agreement do you mean?

MR. KIRLIN: Yes; he said it had not been done after this.

Q. These agreements contained provisions for the arbitration of differences as you recall? A. Yes.

Q. And if you had had a real difference of opinion with them about the interpretation of this clause six that difference in the usual course would have been submitted to arbitration in pursuance of the last clause of the agree-
2719 ment? A. That is what I intimated here in my evidence.

Q. And it would have been submitted on the basis of that clause? A. Yes.

RE-DIRECT EXAMINATION by Mr. Montgomery:

Q. What I understand then is that you have not either chartered or shipped part of a cargo in any ship other than the conference lines during all of this time? A. Not since this agreement. I have no recollection of ever having shipped it.

2720 Q. So that if an opportunity had presented itself to avail yourself of the lower rate you never would have taken advantage of it? A. The opportunity has never presented itself, or we would have availed of it if there had been an opportunity.

Q. By other than the Lloyd Brazileiro; you would not have availed yourself of that? A. No.

Q. Under no circumstances? A. Yes.

Q. That is for some reason, you do not care to disclose? A. Yes, for some very good reason.

Q. But you do not care to disclose it? A. That is right.

Q. It is not because the coffee could not have been car-

ried by them? A. Certainly it could have been carried by 2721
them.

Q. And safely? A. Well, I would not like to say that. We would not ship by them. That is enough, isn't it, Mr. Montgomery? So we could not tell what they would do if we shipped by them.

Q. Yes, but it was not because the ships could not carry the coffee properly; it is a reason other than that? A. It is a combination of circumstances.

Q. And personal reasons? A. No, they are good business men's reasons, not personal reasons. 2722

Q. But not based on any recent experience with the Lloyd Brazileiro at all—— A. No.

Q. Of your own? A. No.

RE-CROSS-EXAMINATION by Mr. Kirlin:

Q. Mr. Purcell, I must ask you a couple of more questions so you won't have to come back here again. During the time that these agreements have been in force have the conference lines furnished and adequate and regular service? A. They have for all our requirements. 2723

Q. And in the main carried and delivered your coffee in good condition? A. Yes.

Q. Where there have been claims that you thought were due to not handling certain lots properly they have always settled them to your satisfaction? A. Yes.

MR. MONTGOMERY: I object to that as immaterial, irrelevant and incompetent.

Q. In the main have the rates been fair and reasonable? A. We have not been able to charter. 2724

Q. You have not been able to charter outside better? A. At a rate low enough to make for the change of that rate.

Q. Of course, a merchant always wants to get the lowest rate he can, but apart from a feeling of that kind, are you prepared to say the rates in the main have been fair and reasonable in regard to the market? A. Yes.

Q. The sailings you say have been regular and adequate? A. Yes.

Q. You have, of course, the privilege under your rebate agreement of shipping by the steamers of any of the lines, or all the lines? A. Of the conference lines you mean?

2725 Q. Yes? A. Oh, yes.

Q. And is there any advantage in that from the shipping standpoint? A. No, only a question of berthing a vessel; there might be a Prince Line boat that suited us and we would ship by it.

Q. That is, if there happened to be two—— A. We make no preferences; it would be a question of convenience for us, that is all.

Q. And having a large number of sailings enables you to make your shipments without having accumulating
2726 charges down there and storage and things of that sort? A. Yes.

Q. Which I take it has a commercial advantage? A. Yes, one that we calculate on.

By Mr. Montgomery:

Q. In saying that the service was satisfactory and so on, just what do you mean by satisfactory; had you in mind anything particular to compare the service with? A. Yes, we have had chartered boats; chartered boats that did not
2727 turn out cargoes satisfactorily.

Q. Chartered boats? A. Chartered boats, yes.

Q. You never had any regular line to compare it with? A. Yes, we had experience with the United States-Brazil Steamship Company back in the eighties; we have had experience enough to be able to judge.

Q. The service has improved a little since the eighties, don't you think? A. Considerably.

Q. A little better boats now than they had in 1880? A. Better and faster boats.

Q. You say they settle claims rather promptly? A. Yes.
2728 Q. You have had correspondence with them sometimes, haven't you? A. Very little.

Q. Sometimes you write a letter of some little length, don't you? A. Well, I don't recollect any particular instance now.

Q. Do you know anything about it yourself? A. Yes; Mr. Waddell knows more about it than I do, but he generally confers with me on claims.

Q. I call your attention to Petitioner's Exhibit 126, which is a letter from Hard & Rand, to Lamport & Holt, in which you say: "Referring to our shipments from Brazil of 18,948 bags of coffee by the S. S. *Tennyson*, arrived at this

port on January 20th last, being 3,948 bags from Santos 2729
and 15,000 bags from Rio, we now beg to advise you that during this ships discharge our Brooklyn representative reported that the outturn was showing unusual damage in the way of slack bags, same being due to their being torn and cut through careless handling in unloading" and so forth: "We immediately got in communication with the ship's agents and requested them to examine the damaged bags as they lay on the wharf." Do you remember that letter? A. No, I do not recollect that.

Q. That was in 1909? A. That is one of many. We 2730
have many of those. Those are very common instances.

MR. KIRLIN: And they are always settled up?
THE WITNESS: Always.

Q. This however, appears to have been written on April 19th, 1909, and you were complaining about a loss on January 20th, and your letter proceeds: "We immediately got in communication with the ship's agents and requested them to examine the damaged bags as they lay on the wharf. This they did and their representative, Mr. David 2731
Cook, acknowledged the poor outturn and advised us that some agreeemnt could be arrived at as to the amount of our damage as soon of report of sweepings was received. Upon receiving report of slacks from your agents we were inclined to at once refer the claim to you, but Mr. Cook requested us not to do so as they would come to some satisfactory agreement with us here." Who is Mr. Cook; is that a member of Busk & Daniels there? A. I don't know; probably one of the staff of Busk & Daniels.

Q. Then you continue: "This was after receipt of their letter of February 18th in answer to ours of the same date. 2732
In their letter you will notice they admit excessive damage and advise us that they are calling the attention of their people to the necessity of greater care to avoid future recurrences. Then when it finally came to a settlement of our claim, Messrs. Busk & Daniels suddenly spring upon us the enclosed copy of extract from letter received by them from your Rio agent, at the same time stating that in view of our shipments from that port having been made in the bunker hatch, at the request of our Rio house, they could admit no responsibility for any damage whatsoever that might have been suffered by our shipment, offering to us,

2733 however, at the same time $125 as a gratuitous settlement of the matter." And you say later on: "In view of the undeniable proof of general careless handling of cargo as furnished by Messrs. Busk & Daniels' own slack statement we felt that in refusing our claim for the reason they first stated, *i. e.*, on the basis of your Rio agents' advice, they were simply taking refuge behind an untenable technicality, thereby showing a spirit contrary to what we might expect as old patrons of and heavy shippers by your line." That was your view about good service at that time, wasn't it? A. Yes, that was all right; that was settled.

2734 Q. Eventually settled, yes? A. We have those things all the time.

Q. Do you think they were settled any better than they would be if the lines were in competition? A. I don't see how they can be settled any better than they are. They are settled to our satisfaction; that is all we require.

Q. That might have been settled sooner, mightn't it? A. I think it was settled immediately. Their claims are settled very promptly.

Q. Then you wrote a long letter of four or five pages,
2735 which is Exhibit 130, letter of April 28th, 1910, about the service you were getting, didn't you? A. Who signed that letter, Mr. Montgomery?

Q. I don't know whose signature that is; is that yours? (Showing witness letter.) A. No, that is Mr. Edmunds.

Q. Who is he? A. I don't do any of the correspondence at all I am glad to say.

Q. Do you keep track at all—— A. Of the salient points of the correspondence, that is all.

Q. Do you take up these questions of damage? A. Never.
2736 Mr. Waddell takes them up and after he has stripped them and got them all down he comes to me if there is any difference of opinion and I give my opinion. As a rule he settles them all himself.

Q. Did he ever take up with you the question of robbery on the dock which is mentioned in Petitioner's Exhibit 131? A. We have discussed those things. Never took them up in any detailed manner.

Q. The only comparison you can make is with the condition existing in the eighties, Mr. Purcell? A. No, since then by charters.

Q. And by charters? A. Since then, yes.

Q. It is not usual to get the same class of service by a 2737
chartered steamer as it is by a regular steamer that is part of a line, is it? A. No, but it shows you the difference if you make a comparison to see how much better the regular service is.

Q. Than the charter? A. Yes.

Q. It would be so in the regular service mostly, wouldn't it? A. I don't know about that.

Q. You would expect it in the regular service, wouldn't you; you would expect it as in any service that the regular line would serve you better than charters? A. No, 2738
there are regular lines I would not expect the same service from.

Q. I am not talking about any lines in particular, but in a general way, not relating to any particular line or any particular traffic? A. Yes, we do expect by a regular service better service than by charter.

Q. And very much better, wouldn't you? A. Yes.

Q. It would be a very poor line that would not compare very favorably with charter service, wouldn't it? A. Yes, a very poor line.

Q. Do you find the service any better now than it was in 2739
1907 and 1908? A. No, I don't think so.

Q. There was more competition between these lines at that time? A. There was a bit when there was a war on.

Q. A competitive war for cargo? A. Yes, a competitive war.

Q. And the service was good then, wasn't it? A. Yes.

Q. Claims were settled just as promptly, weren't they? A. Yes.

Q. Or more so? A. Not any more so.

Q. Just as promptly at least? A. Yes. 2740

Q. And the same superiority I would say over charter service obtained then by the lines, didn't it? A. They have given us as good service as we could want.

Q. During that competitive period? A. Yes.

Q. Nothing has been added at all that you know of since they combined in—since February 14th, 1908? A. No, I don't know of anything.

Q. You know February 14th, 1908 does not stand out in any way in your mind as marking the dawn of a new era in the steamship business? A. No, it might make the schedule of sailings a little more regular.

2741 Q. You might say it might? A. It might.

Q. You are not very sure about that, are you? A. No.

Q. You are not sure but what the combined service of the lines—— A. I worked under both and I do not know that there is much difference.

PAUL F. GERHARD, being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

2742 Q. Mr. Gerhard, you live here, do you? A. East Orange, New Jersey

Q. What is your business? A. I am a steamship agent, agent of the Prince Line.

Q. Are you in business by yourself or is it a copartnership or what is it? A. It is a copartnership.

Q. Consisting of whom? A. Of myself, my son and Francis J. Zimmermann.

Q. And this partnership does business under the name of what? A. Paul F. Gerhard & Company.

2743 Q. And having its place of business where? A. 8 and 10 Bridge Street, New York.

Q. You say you are agents for the Prince Line, party defendant in this suit? A. Yes, we are.

Q. And your firm are likewise party defendant? A. Yes, sir.

Q. How long have you been the agent for the Prince Line? A. Since January, 1908.

Q. What was your business prior to that? A. Prior to that I was the outward freight agent of the Lamport & 2744 Holt Line for fourteen years.

Q. Were you connected at that time with Busk & Jevons? A. Yes, I was outward freight agent and Busk & Jevons were the general agents.

Q. Then through the year 1907 and—1906 and 1907—you were more or less familiar with the outward freight business of the Lamport & Holt Line? A. Yes, sir.

Q. You had no connection with the Prince Line at that time? A. No, not with the Prince Line direct, but after Busk & Jevons took over the agency of the Prince Line we acted for them, for Busk & Jevons as outward freight agents of the Prince Line as well; that is, it was not a direct appointment from the Prince Line.

Q. When was it Busk & Jevons took over the general 2745
agency for the Prince Line? A. I don't recollect; I think it must have been about 1906, I think that same year or a year and a half or two years.

Q. They held it up to the time that you superseded them, that is, your firm, is that right? A. Yes; they held that until December, 1907.

Q. Was it your firm that superseded Busk & Jevons, or was it you individually? A. No, the firm; my firm superseded Busk & Jevons as general agents for the Prince Line. 2746

Q. Then since 1907—December, was it, 1907? A. I took over the agency in January, 1908.

Q. Since that time you have been the general agents here? A. Yes.

Q. And you have made all the contracts for the Prince Line for inward and outward freight and passenger service? A. No, outward freight; outward freight only.

Q. You had nothing to do with contracts made elsewhere for inward freight? A. No, sir.

Q. On business in Brazil? A. Nothing at all.

Q. Have you any representative in Brazil? A. The 2747
Prince Line has agents there.

Q. Who is their agent in Rio? A. Davidson, Pullen & Company.

Q. How long had they been the agents? A. I could not tell you, as I found they were agents as long as I have been an agent with the Prince Line.

Q. Was this at Rio? A. Rio de Janeiro.

Q. Since 1908, who have been the agents for the Prince Line at Santos and Victoria? A. At Santos, Zerrenner, Bulow & Company. 2748

Q. And at Victoria? A. Hard, Rand & Company.

Q. That is Hard, Rand & Company—— A. At Victoria.

Q. And that is Hard, Rand & Company—— A. The same concern.

Q. That has a business here and are importers of coffee? A. Yes, importers of coffee.

Q. The same Hard & Rand with whom Mr. McCreary and Mr. Purcell and Johnson and Waddell have been connected with and testified here in this suit? A. Yes.

Q. How long have Hard, Rand & Company, been the agents at Victoria? A. I could not tell you. It is as long

2749 as I have been connected with the Prince Line. How much longer prior to that I don't know.

Q. Since you have been connected with the Prince Line, either as the general agent, or the forwarding agent for Busk & Daniels? A. Yes, as long as I can remember it was Hard, Rand & Company.

Q. Who represented the Prince Line at Natal? A. We have no regular agent at Natal.

Q. Have you one at Ceara? A. No, sir.

Q. And at Cabedello? A. They have an agent there; I
2750 could not tell you the name now, a sub-agent.

Q. And at Maceio? A. As sub-agent only there.

MR. KIRLIN: What office are they under.

THE WITNESS: Under the office at Pernambuco; T. E. Evans is agent at Pernambuco and those ports and Maceio, they have them in the office.

Q. Who did you say was the agent at Pernambuco? A. T. E. Evans.

Q. How long have they been the agents? A. As long as
2751 I have been connected with the concern; longer than that.

Q. Since 1907, or from the time that the Prince Line agency passed to Busk & Jevons and while you were connected with them down until the present time to what ports has the Prince Line had what you may call a regular service? A. To Pernambuco, Bahia, Rio de Janeiro and Santos.

Q. And those are the only ones? A. We have two steamers——

Q. I want regular service? A. Those are the regular ports.

Q. What do you mean by a regular service? A. Des-
2752 patching steamers to those ports on regular dates.

Q. On advertised dates? A. Advertised dates.

Q. And do the same ports—since 1908 have they been continuing the regular service to those ports? A. To those ports, but we have sent them to other ports as well.

Q. What would you call the other service, have you a particular name for it? A. I don't think we have a special name.

Q. A casual service where you have commitments for—— A. We have no special name for it; I don't know what you should call it.

Q. I am asking you whether you did have? A. No.

Q. All the service, that is to say desultory or casual service, is not embraced in what you call regular service? A. No, sir. 2753

Q. And you only have those services when the occasion makes it advisable or necessary? A. Yes.

Q. Are those services other than the regular services more or less sporadic; that is to say, they occur only at long intervals of time? A. Yes, as the freight may offer and we thought it convenient to send a boat. As the freight may happen to be offered for those smaller ports.

Q. How often would that be during a period of twelve months? A. I don't think in the period of twelve months possibly we have sent to any other ports but the four ports. 2754

Q. From about 1911? A. In 1911——

Q. I am not asking you to fix it definitely, but give us the general? A. If you will allow me, in 1909 I recollect we sent ships to Rio Grande do Sul, and to San Francisco do Sul and also in 1908 we sent a steamer to Natal.

Q. How often? A. Only once. We sent two steamers; one came to grief, and we had to send another one, and we have sent no steamers since.

Q. Then this would not occur more than one or twice a year? A. No, we do not send steamers to Natal at all; we have given up that, but we do send occasionally to Maceio and Cabedello. 2755

Q. Do the other conference lines have regular service to Natal and Cabedello and—— A. I don't think any of the conference steamers go to Natal.

Q. To the other places? A. To Cabedello and Maceio we send occasionally; the Hamburg service sends there.

Q. That is only occasionally? A. Only occasionally; they are small ports. There isn't much going on there and they send out at regular intervals to San Francisco do Sul and Rio Grande. 2756

Q. How often? A. To Rio Grande I think about once a month.

Q. From here? A. From New York, I think so. They can better inform you on that point than I can.

Q. Then I take it that neither one of these four towns that I have mentioned is served regularly by any of the conference lines' steamers at the present time, Natal, Ceará, Cabedello and Maceio? None of those four towns

2757 at the present time have any regular service? A. We are serving Cabedello and Maceio, but not Natal and Ceará.

Q. Are the conference lines serving Natal and Ceara, by what you call your regular service? A. We are not sending any boats to Natal and Ceará, but we do sendand are going to send regularly to——

Q. I am not asking you for that, I am asking you what you have been doing in the last year? A. We have sent them at intervals as the opportunity presented itself.

Q. That is not regular service? A. No.

2758 Q. My question was that for the last year up to the present time do the conference lines serve those four ports, and if any of them, what ones? A. You say that served; I say no. If you say serve I should say yes because we are sending them now. We have arranged a regular service to Maceio and Cabedello, so those ports are served regularly, but they have not been served regularly in the past.

Q. You say that you are going to, when do you start the service? A. The Hamburg-American Line despatched a steamer for Maceio last month.

2759 Q. That is the first time, is it? A. We had decided to give those ports a regular service.

Q. You say we have decided, you mean by conference agreement? A. The conference lines, yes; the Hamburg-American Line and the Prince Line.

Q. And which line is to serve them? A. The Hamburg-American Line and the Prince Line alternately.

Q. The Prince Line has not served that port under this new arrangement, but you are going to; you have not up to the present moment? A. No, sir, we have not yet.

2760 Q. Up to the present time and before your new arrangement had come into effect had the conference lines had any arrangement with what was known as the Booth Line with reference to the service of those ports or any of them? A. They have an understanding with the Booth Line in Europe; I am not familiar with the details of it.

Q. You mean to say the conference has? A. The conference has.

Q. The London conference? A. Well, I suppose so, yes. They have an understanding with the Booth Line that I am not familiar with.

Q. Do you know how long that understanding has subsisted? A. I guess for a number of years.

Q. To your understanding it has been in existence during 2761
the time of this present conference, hasn't it? A .I have understood it.

Q. And even before? A. Well, I don't know how long it has existed.

Q. Do you know whether or not that understanding or agreement, or whatever you call it, between the conference and the Booth Line was made by reason of this conference agreement, that the four lines—— A. I don't know that.

Q. You don't know the terms of the agreement, but can 2762
you tell us how they operate under that arrangement with the Booth Line? A. My impression is simply that the Booth Line don't send steamers to the ports that the conference steamers go to, and we don't go to the ports that the Booth Line send steamers to.

Q. It boils itself down to just about that, doesn't it? A. That is about what it is. They don't interfere with our trade and we don't interfere with their trade.

Q. Did not the Booth Line trade to those ports before this agreement was made or this understanding had? A. 2763
I don't think they ever did send steamers south of Pará or Ceará.

Q. Are you quite sure about that? A. I don't think they did.

Q. The Booth Line is quite an old company, is it not? A. Yes, sir, it is a very old company.

Q. Have they many ships? A. I don't know what ships they have.

Q. They have a considerable fleet, haven't they? A. They have a large fleet I think.

Q. And they have been trading, that is to say they have 2764
been carriers from the ports of New York and Brazilian ports and from Europe to Brazilian ports and return for a great many years, haven't they? A. A great many years, yes.

Q. And the result of this understanding between the conference lines and the Booth Line has been that since 1908 at least the Booth Line has not been taking cargo from New York to these ports which we are—— A. I think they have sent some steamers since 1908 to some ports.

Q. But the general result has been they have kept out

2765 of the territory? A. Except with the special understanding of the lines.

Q. In other words, there have been times when they had gone to ports which they would keep out of by an agreement or some substantial change in the agreement which existed? A. Yes.

Q. Do you know whether or not prior to the inauguration of the service by the conference lines to the four ports that I have mentioned, Natal, Ceará, Cabedello and Maceio, whether or not those ports were served by the
2766 Lloyd Brazileiro? A. I don't know. I do not keep track of the steamers of the Lloyd Brazileiro at all. I don't know what they do. I see them advertise but I do not fix it in my mind.

Q. In your position as the general agent for the Prince Line you have sole supervision here of all the commitments of freight outward? A. Yes.

Q. To any point? A. To any ports in Brazil, yes.

Q. You mean to any port in Brazil; what about the River Plate? A. From here to Brazilian ports I said.

2767 Q. And also to the River Plate and South Africa? A. Yes.

Q. And in 1907, Mr. Gerhard, you testified that the respective lines were not in agreement and there was a competitive era there? A. Yes.

Q. Do you know how long it existed? A. No, I don't recollect how long. I think the lines came to an understanding in 1908. That is all on the record here.

Q. Wasn't it about eleven months or pretty close to a year? A. That we were all fighting, yes.

2768 Q. And prior to that time you had been in some form of agreement? A. That is most of us, I think so.

Q. You had a regular agreement at that time, didn't you? A. I think we had some agreement; I don't remember it.

Q. The regular conference here in New York prior to that time? A. I think we did at that time, yes.

Q. And the Lamport & Holt Line—were you as the agent, or the freight agent of either the Lamport & Holt Line or the Prince Line, as the case may be attending conferences here in New York? A. I always attended.

Q. And during this competitive period in 1907 there

were no conferences? A. As far as I recollect I don't 2769
think we had any conferences then.

Q. Since 1908 your Prince Line has been trading under this agreement, Exhibit 1, has it not? A. Yes.

Q. With the other lines? A. Yes, with the other lines.

Q. And you had your conference meetings here in New York? A. Yes.

Q. Where did the Prince Line have its docks since 1908? A. At the Bush dock.

Q. And you have no dock of your own? A. Well, that is leased. We hold a long lease there.

2770

Q. You lease it from the Bush Terminal Company? A. From the Bush Terminal Company, yes.

Q. How long have you occupied those premises? A. Sir?

Q. How long have you occupied that dock? A. Well, they occupied it over ten years; it is my impression as long as I have been connected with the Prince Line they have had that dock and they had it for years before that.

Q. Your boats berth there I suppose? A. Yes.

Q. And depart from there? A. Yes.

Q. That is where you receive your freight? A. Yes. 2771
We load the ships there.

Q. You load, and that is where you unload too? A. Not always.

Q. Isn't it the usual place of unloading? A. No. The New York merchants like to have the ships discharge their coffee at their piers.

Q. You mean their piers in New York or Brooklyn? A. Yes. Say we go to Brooklyn and discharge coffee and we then proceed to the Prince Line pier to load.

Q. But in any event outside of the regular place at the 2772
Bush dock as you call it, wherever you do your unloading for the benefit of the merchants, it is some place within the port of New York? A. Yes.

Q. Do you receive commitments for outward freight from all parts of the United States? A. You mean we engage freight from all parts of the United States?

Q. Yes? A. Yes.

Q. Shippers from various points in the United States? A. Yes.

Q. From shippers down in the Mississippi Valley and the Gulf and the far west and middle west? A. I don't

2773 think we get many engagements direct from the west; our bookings are mostly with New York merchants.

Q. You have quite some outside merchants, don't you? A. Yes, there is some outside, but not a large amount. It is mostly all done through New York.

Q. But you receive commitments from merchants and manufacturers at various times down southwest that come here by rail and then go on your boats to the south? A. Yes.

Q. Now, would not contracts for those engagements
2774 be made direct with you, or through some middlemen, how would that be? A. We would make those engagements direct with the shipper if he applies to us, or through a middleman if he comes to us.

Q. You have continued to hold yourself out as carriers to take commodities to any ports that would pay your rates? A. Certainly, we are open to anyone.

Q. You advertise your time of sailings? A. Yes.

Q. New York is the only place in the United States from which the Prince Line ships? A. We have I think sent a
2775 few steamers to Savannah once to take in some resin and lumber.

Q. That is the only one, subject to some special agreement? A. Special agreement, yes.

Q. But outside of that business is carried on from New York and solely from New York? A. Yes, from New York.

Q. And your ships have come with cargoes from South American ports and come to New York? A. Not all; we send one steamer a month from Brazil to New Orleans.

Q. That is pursuant to some arrangement with the conference lines, is it not? A. I presume so. I don't know
2776 what the arrangement is, but I know we have a ship from Brazil once a month to New Orleans.

Q. You mean to say on its way to New York it stops at New Orleans? A. They don't always come this way; sometimes they proceed from New Orleans to Europe; mostly they load in the Gulf for Europe.

Q. Do you know whether any conference lines have steamers direct to New Orleans? A. Yes, Lamport & Holt send steamers.

Q. What others? A. I don't think any other steamers.

Q. The Hamburg-American Line did have steamers to New Orleans, did they not, or from New Orleans during

the time of this 1907, this rate war period? A. I think 2777
they did send steamers at that time.

Q. And when this agreement was made and they became part of the conference then under that agreement they discontinued that service? A. I think that is the case, yes.

Q. And it was limited to the New Orleans service, whether regular or irregular, and was limited to the Lamport & Holt and the Prince Lines? A. Yes, as far as I understand it.

Q. So that from 1908 down to the present time the 2778
Prince Line has been operating its boats under this agreement, Exhibit 1 of the petition here, which you have seen? A. Yes.

Q. And been holding conferences continually here in New York? A. Yes.

Q. And for the purpose of carrying out the terms of that agreement? A. For the purpose of carrying out the terms of that agreement, yes.

Q. After this agreement was made and entered into February 14th, 1908, since that was entered into who arranged for the number of sailings per annum from New 2779
York? A. Well, the agreement stipulates the number of sailings I think.

Q. The agreement among other things provides that the Prince Line is to have twenty-four sailings per annum and the Lamport & Holt Line twenty-four and the Hamburg Lines twenty-four? A. Yes.

Q. And then it says that an itinerary covering the requirements of the various ports to be drawn up and agreed upon, the object and intention being that an excess of tonnage for any particular destination may be avoided. Now, had the various lines in conference adhered to the 2780
sailings mentioned in this agreement, twenty-four sailings per annum? A. I think that the Lamport & Holt has been despatching in the last few months a third steamer.

Q. Up to the last three months there has been a substantial compliance? A. Yes; prior to that they all adhered to not exceeding twenty-four sailings a year.

Q. Since that time the Lamport & Holt you say added some? A. They have been despatching a third steamer a month.

Q. Was that subject to an agreement and arrangement

2781 with the conference? A. I do not know what the agreement is; I don't know anything about it.

Q. And arranged at any conference here in New York? A. No, sir.

Q. Do you know whether or not it was arranged subject to any conference in London? A. I don't know. I have had no information on that subject.

Q. Any general information? A. I have had no information from my principals on that subject.

Q. Was there upon the signing of this Exhibit 1 an itin-
2782 erary covering the requirements of the various ports drawn up and agreed upon? A. I don't really think we drew up an agreement on that point.

Q. What did they do about it? A. We simply despatched the steamers as opportunity presented itself.

Q. It says here that the intention being an excess of tonnage, to any particular destination may be avoided. Now, what did you do for the purpose of avoiding that excess of tonnage? A. We have simply despatched our steamers to the four ports and have not found any necessity to curtail it. There seemed to be freight as a rule for
2783 all the steamers scheduled.

Q. Hasn't there been any conference or any meeting of the conference here in New York for the purpose of ascertaining whether there was an excess of tonnage? A. We have not discussed the question of excess tonnage. At these meetings we simply report the cargoes booked and the steamers when they cleared or sailed, the amount of cargo they carried, that is all.

Q. Have you ever ascertained or made an attempt to ascertain whether there was this excess so that you would
2784 have an arrangement under this Exhibit 1 to avoid it? A. Thus far the steamers seem to have got their cargoes all right and we have had no ocassion to.

Q. Then because of the actual working out in the trade the excess has not occurred and so, therefore, you have not taken any steps about it, is that the idea? A. That is the idea.

Q. You testified, did you not, Mr. Gerhard, before the Committee in Washington, the Committee on Merchant Marine and Fisheries? A. I did, sir, yes.

Q. Just for the purpose of refreshing your recollection, is it true that you found that one of your steamers, one

line would have cargo short and that you made some ar- 2785
rangement between the other lines in reference to it? A. We had to occasionally. If one steamer is short we will appeal to the other agents whose steamer perhaps does not go for another week, to see if they haven't any cargo, to transfer to it.

Q. If one was short you mean to say that the question of shortage would not come under this understanding with reference to excess, if one was short and another more, it would be at least as far as one was concerned excess, wouldn't it? A. It would, yes, and we would simply try to 2786
get the steamer loaded and despatched on her date if possible, on the schedule date.

Q. You would report in your conference here that situation? A. We would.

Q. And then make an arrangement between you to fill up the boat from freight which the other conference lines had? A. That is the idea, and let them get out of port.

Q. And all pursuant to agreement? A. Yes, all pursuant to agreement; and that would be done not only in conference, at the meeting, but we might do it over the telephone; see if we could not help each other out. 2787

Q. You did not have any such agreement as this with any other line—these four conference lines, did you? A. No, sir.

Q. Is anything done now, or has it been done, since 1908, by the conference lines with reference to pools? A. No, sir, nothing since 1908.

Q. This contract provides for arrangements to be made for pooling, you remember that, don't you? A. That was only kept for one year; there has been no pooling since.

Q. Then you must have abandoned it in 1909? A. I 2788
think that was the date.

Q. Do you know how that happened to be abandoned? A. I think that the agreement before you stipulates the pooling is to be done for one year only; I think it is so stated.

Q. On the 19th of March, 1909, Exhibit 3, of the petition set forth as of that date a notice by the Lamport & Holt Line to the effect that it and the Prince Line together gave notice under clause twelve of the agreement that they would terminate the pooling understanding on June 30th;

2789 now, that is the date; I just read it to refresh your recollection. Do you know why this pooling was abandoned? A. I do not, sir.

Q. Do you know whether or not it was done pursuant to any legal advice your line had received about it? A. I don't know anything about it.

Q. Now, Mr. Gerhard, how were the rates originally determined for outgoing commodities after this agreement was entered into in 1908? A. I think according to that agreement before you there were certain articles called
2790 staple articles the agents had discretion to make rates on those, basing the minimum I think at eight cents a cubic foot. I think it is in the agreement. The other tariff rates were fixed in Europe and we had no discretion on them whatever.

Q. It says here in paragraph two of the Exhibit: "Pending a basis for a poolir greement being arrived at, a tariff of rates from Ne to be drawn up and strictly adhered to without ar tion whatever except as they may be altere nt in meeting or in writ-
2791 ing." Now, was t' ıe drawn up? A. Yes, sir.

Q. And where w drawn up? A. I think the schedule was drawn up here, at it was really based on the European tariff as far as I recollect.

Q. Was that a European tariff that was in existence and to which the conference lines adhered prior to the rate war, this period of 1907? A. I do not recollect just how we worked it.

Q. I assume, Mr. Gerhard, that it was drawn up upon some other tariff and there was a competitive era when
2792 those tariff rates were not adhered to by anybody; it could not have been the diverted rate between the lines that was the basis of this tariff? A. I presume while the lines were fighting each other, of course, we took whatever rates we thought advisable to accept. We would then even be guided by the old tariff.

Q. And you had some sort of a printed tariff which was in force and effect between the conference lines, or say between these lines now in conference, sometime in 1906 or prior? A. They were not the same lines at that time.

Q. What lines were they at this period? A. At that time it was the Lamport & Holt Line, the Prince Line and the Sloman Line. The Sloman Line, Funch, Edye were the

agent of, and those steamers of the Sloman Line were sold 2793
to the Hamburg-American Line, and that is the way the Hamburg-American Line started in the Brazil trade, with those steamers.

Q. They just simply took over all of the ships and the whole business of the Sloman Line? A. As I understood it.

Q. Now, the Sloman Line was a carrier from New York to these Brazilian ports? A. Yes, the Sloman Line had been running for many years prior to that.

Q. Did they have quite a fleet of vessels? A. I don't 2794
recollect how many steamers they had.

Q. They were quite a large company, weren't they? A. I think they had sufficient steamers for the Brazil service; how many more they had I don't know.

Q. Were they going to the same ports as the Prince Line and the Lamport & Holt Line? A. Yes.

Q. And there was some sort of an agreement or conference between them before this rate fight? A. Yes, there was an agreement.

Q. And was this conference or whatever it was between the Sloman Line and the Lamport & Holt Line and the 2795
Prince Line, did it arrange for the number of sailings and what ports each line should go to? A. I think as far as I recollect we had.

Q. There was an agreement between them? A. Yes.

Q. And you had conference meetings here the same as before? A. Yes, I think we had regular meetings.

Q. And along came the Hamburg-American Line which up to that time was not a competitor? A. Yes.

Q. Between New York ports and the Brazilian ports, and Brazilian ports and New York, and it took over this Sloman 2796
Line? A. Yes.

Q. And then immediately after that the trouble commenced, is that it? A. The trouble commenced, I think as far as I recollect it.

Q. Can you look at this book, Exhibit 1——

Q. I show you Exhibit 1; can you state whether or not this exhibit appears to be a printed tariff rate bearing date July, 1904, and was the basis of the tariff rate agreement that was arranged for between the conference lines after Exhibit 1 in the petition was entered into? A. No; this is later than that. This was gotten up in 1904; the agreement date is 1908.

2797 Q. Yes, but is that the basis of the tariff for the agreement rates that were made between the conference lines after this Exhibit 1 was executed? A. I could not tell you. I presume it was; I could not tell you; I am not positive about it. This was our old tariff, I acknowledge that, but this is 1904, and, of course, we kept correcting it from time to time as the freight changed.

Q. I wish you would look at the first page of this, there is some handwriting there with reference to increased rates and so forth, and I ask if you know whose handwrit-
2798 ing it is? A. That is signed June 9, 1908, and that evidently shows it was the basis of our agreement in 1908. That no doubt was the basis of our new agreement.

MR. KIRLIN: He asked if you recognized the handwriting?

THE WITNESS: I do not recognize the handwriting. I don't know whose writing it is.

Q. I show you what purports to be a duplicate copy of a printed tariff of rates of July, 1904, having your name, Paul Gerhard, on one of the pages; can you state whether
2799 or not that is the tariff? A. Yes, no doubt that is the tariff, revised January 1st, 1910.

Q. Now, is that book which you hold in your hand, which is a duplicate of Exhibit 1—I mean duplicate as far as the printed matter is concerned—is that the basis of the tariff rate that was arranged for after this Exhibit 1 of the petition was executed? A. I am not prepared to say so positively. I think it is, but I do not recollect it positively to say so. I find that this one refers to 1910; all of these additions are in 1910; I don't see anything prior to that,
2800 but I think it was the basis of the tariff.

Brazil tariff, with the name of Paul F. Gerhard inserted, marked Petitioner's Exhibit 213 for identification.

Q. Do you know that they arrived at the rates in 1908 after the agreement using this former tariff as a basis? A. I don't know that.

Q. That was not done here? A. It was done here, but my impression is it was done on the basis of the English tariff which was sent to us.

Q. Has that been true of all the tariffs? A. All the tariffs have really been based on the English tariff.

Q. That is to say, the printed list in force for shipments 2801
from the United States to any one of the Brazilian ports, is that the idea? A. That is the idea. That we would reduce here sterling into American money.

Q. After it was entered into, I mean after you had arrived at a rate agreement after Exhibit 1 was made, did anybody here for your line have any authority to change the rates at all? A. Well, as I have already remarked, we had as far as I recollect, we had discretion on staple articles down to a minimum of eight cents per cubic foot.

Q. Is that true of all the conference lines' agents? A. 2802
By agreements of the—I thing unanimous agreement of the agents here we could change those rates on staple articles like flour, resin, barb wire, lumber—I think those were all the articles—kerosene; those are what we call the staple articles.

Q. Flour? A. I said flour.

Q. I call your attention to article two, or paragraph two of this agreement, which says: "Pending a basis for a pooling agreement being arrived at, a tariff of rates from New York to be drawn up and strictly adhered to without any modification whatever except as they may be altered 2803
by agreement in meeting or in writing." There seems to be, Mr. Gerhard, a specific prohibition for anybody to change the rate after once entered into unless by agreement with the other conference lines? A. I think you will find another clause there about staple articles as far as I recollect. I know our authority was limited to staple articles. I have that very clear in my mind.

MR. KIRLIN: You mean you had authority to do what?

THE WITNESS: To change; our authority was 2804
limited to staple articles.

Q. You remember, Mr. Gerhard, testifying before this Committee and being asked with reference to whether you had any discretion about fixing rates? A. Yes, I have it pretty clear in my mind what I said. I mentioned the same article.

Q. Just state what discretion, if any, did you have or exercise after this agreement, Exhibit 1, with respect to the varying of rates? A. For several years after that

2805 agreement was entered into we were at liberty to change the rates on staple articles named here, such as lumber, resin, flour, kerosene and barb wire and one or two other articles, but even that authority was withdrawn from us.

Q. When? A. Well, that was when our market commenced to advance so rapidly; that must have been about two years ago, two years and a half ago. It advanced so rapidly that we received very positive instructions to put up the rates on kerosene and resin and so forth.

2806 MR. KIRLIN: By your "market" you mean the freight market?

THE WITNESS: The freight market. We received very positive instructions to put up the rates on those articles which we were still holding at the lower figures.

Q. You received those instructions from where? A. From London.

Q. You mean the London conference? A. The London conference, through the secretary in London.

2807 Q. Who was the secretary at that time? A. I don't know, sir; I don't know who is secretary. It came by cable without signature.

Q. Where did you get this authority to vary these rates up until two years ago; you had that petition there, will you point out under what clause you claim at least to have it? Mr. Gerhard, I want to be perfectly fair with you, and Mr. Montgomery calls my attention to the fact that on page 27, that is Exhibit 2, and paragraph eight of the tariff, it may be what you are looking for? A. "This tariff until

2808 mutually agreed not to apply to the following staple articles provided they are shipped in lots of not less than forty tons, to be engaged only at a net rate and for F. F. A. delivery aboard and without the benefit of deferred bonus, lumber, case oil, barb wire, flour, resin, cotton seed oil, rails, plates and bars." Those are all named there.

Q. That is what you had reference to? A. Yes.

MR. KIRLIN: Rates on which may be decided from time to time by a majority of the principals.

THE WITNESS: (Reading.) "In case there should be an exceptional enquiry in respect of which in the opinion of the majority of the agents there is no

time to communicate with their principals a ma- 2809
jority of the agents may decide the rate, but in that case their decision is to be immediately cabled to the principals together with the reasons for the reduction." This I had entirely forgotten. We never acted on that part. I have not read this for years. We never acted on that.

Q. Under this agreement—— A. We have always submitted when we wanted the lower rate than the tariff rate; we always cabled; we never acted on it. 2810

Q. But under this agreement you as the agent, we will say for the Prince Line, never solely exercised the right to vary it; you always conferred with your agents here? A. Yes, always.

Q. And where the commodity offered was—speaking of these things which you have just read in last—were even under forty tons—I mean if the lots were not less than forty tons, you would not attempt to make any change at all? A. That forty tons really applies to F. F. A.; that means free from alongside. Small lots are delivered by 2811
the steamers on shore, while the larger lots if merchants prefer they could make contracts free from alongside.

Q. I say even in lots of less than forty tons you would not vary, individually vary I mean? A. No, and we would not think of breaking the rates for forty tons, such a small lot like that.

Q. Then, whatever discretion vested in the agents to vary at all for any of these articles was the joint action of the agents and not any individual agent of the line? A. Joint action of the agents.

Q. And that authority was taken away from you say 2812
about two years ago? A. Two years or two years and a half ago.

Q. So that since that time and up to the present time you have a fixed and rigid tariff which can only be varied upon the consent of the principals? A. As far as I understand it, yes. I suppose I could take it upon myself to act for the Prince Line very often; I would be disposed to do it without real positive authority.

Q. In that case then you would be acting for the Prince Line yourself as an agent? A. Well, I would assume the responsibility in making the rates.

2813 Q. Did that happen very often? A. No, I don't think it happened very often. I much preferred to submit it to the principals and let them decide it.

Q. That has been the usual practice, has it? A. It has been the usual practice.

Q. Did you ever have any outward rebates under this agreement? A. No, sir, not under this agreement.

Q. And you notice that paragraph three here says, of Exhibit 1, "Consideration to be given to the re-establishment of the deferred rebate system on the same lines as
2814 that in force in Europe," page 22; do I understand that you did absolutely nothing on that? A. Nothing whatever, sir. It has never been done; never acted upon.

Q. But the inward rebate system was adopted? A. I don't know anything more about it than I know from this agreement.

Q. Don't you know as a matter of fact that the Prince Line has been paying rebates to shippers? A. As a matter of fact I do not, because nothing of that kind passes through my office. I learned that here in these meetings, and what I have seen in the papers.

2815 Q. You mean in this trial of this issue here? A. This issue, and a year or two ago when we had the investigation before the District Attorney.

Q. You mean before the Grand Jury? A. But prior to that I never knew anything about that.

Q. You bring a great deal of coffee to this port? A. We do, sir, considerable.

Q. They had coffee ships from Brazil to return here in New York? A. Yes.

Q. Including Hard, Rand and a number of others? A.
2816 Yes.

Q. Where is the payment made for freight? A. We collect the freight here.

Q. And to whom do you report? A. We report to the home office. We collect the freight and make our account to the home office in New Castle on Tyne.

Q. You mean in this accounting giving the steamer and the amount of cargo, the rate and the amount collected I suppose? A. Yes.

MR. KIRLIN: You mean by our home office the home office of the Prince Line?

THE WITNESS: The Prince Line at New Castle on Tyne.

Q. Did you know that the Prince Line was paying re- 2817
bates to Hard & Rand and other shippers? A. As I stated, as a matter of fact I don't know it, but I have heard that.

Q. I do not mean that the actual data passes through your hands, but that you did know in a general way that from 1908 right down to the present time the Prince Line was paying rebates on coffee shipped to this country? A. I don't know how I can say I know it when I have never seen a rebate bill.

Q. It is a matter of general information in your office, 2818
isn't it? A. No, I don't know anything about it in our office. The first intimation I knew about the rebate system in the first instance was when I saw it published in the Journal of Commerce, and the petition after that, I was down to the District Attorney's office and he showed me a circular and that is the first I ever saw of it.

MR. KIRLIN: How long ago was that?

THE WITNESS: A couple of years ago.

Q. When did you first hear of this agreement, Exhibit 2819
1; how long after it was executed? A. I suppose a very short time after it was executed.

Q. There were a great many conferences, were there not, here in New York between the agents of these lines? A. Yes, sir.

Q. Leading up to the making of the agreement? A. Yes outward only.

Q. I mean the agreement itself? A. To live up to the agreement——

Q. You do not catch my meaning, the making of it? A. 2820
Oh, this agreement?

Q. Yes? A. No, sir, we had nothing to do with the agreement. It was sent from London.

Q. The whole thing came from London? A. Yes.

Q. Not even consulted? A. Not even consulted. The first knowledge I had was when I received a copy.

Q. So that the provisions in there you were not a party to? A. I was not a party to.

Q. You simply received it after it was made and were instructed to operate under it? A. As an agent instructed to operate under it.

Q. Mr. Gerhard, look again at paragraph five of this Ex-

2821 hibit 1, on page 27; it says there "the rate of freight on coffee to be fixed in conference at the highest possible level, no alteration to be made therefrom except by mutual agreement." Do you know whether or not the rate upon coffee was fixed immediately after that? A. I don't know anything about coffee rates.

Q. And that was a matter, if arranged at all, that was arranged for abroad? A. Abroad; it was never done in New York.

Q. It says further in the same paragraph "The rates of
2822 freight on all other articles excepting on sugar from the northern ports also to be agreed upon and adhered to." Now, what was done, if anything, by the conference here with reference to fixing those? A. I don't know anything about the homeward business, and I don't know anything about homeward business; never had been consulted and never received instructions about it.

Q. Then, according to your idea, Mr. Gerhard, every single one of the provisions provided for in this Exhibit 1 under the head of "homewards" was arranged for abroad
2823 without consulting the agents here at all? A. Yes, sir.

Q. Although the actual collection of the freight and so forth was made here in New York? A. Yes.

Q. Exhibit 2, which is known as the pooling agreement, on pages 25 and 26 and so forth of this petition, appears to be dated on the 8th of July, 1908; do you know whether or not any pool was formed immediately after that? A. Well, there was a pool formed for one year.

Q. Now, just what was that pool; how was it operated? A. I could not tell you exactly how it was operated. We
2824 reported the amounts of freight, the cargo, the steamer carried, the amount of freight, and we reported that, and from all of these reports the secretary made up the account and showed how much (the lines were equally interested) how much one line would owe the other line after dividing the net proceeds into three parts.

Q. And was that account kept here? A. I think the secretary made up those accounts.

Q. Did the commissions or compensation account as agents come out of that pool? A. Those commissions were pooled also according to this agreement.

Q. And then after deducting your commissions the proceeds were all sent to the London office, were they? A.

We did that regularly; as soon as the steamer is despatched 2825
we make up the account and after deducting the expenses in the Port of New York and our commission we, of course, remit the balance to the principals. Each line individually.

Q. During the time that the pooling arrangement was in effect was the net results of the pool forwarded to the London conference? A. The secretary would make up the statement and hand it to each of the agents and would forward the copies to the principals.

Q. In addition to that did not the conference here 2826
through the agent or secretary or somebody else send to the London conference as a conference the result of the pool; wasn't that the practice? A. I don't think so. I think those accounts went to the different agents, to their respective principals.

MR. KIRLIN: That was after the money had been sent home?

THE WITNESS: There was no money exchanged here at all between the agents. The settlement of the pool was arranged in London; no money ex- 2827
changed here at all.

Q. Well, that is coming down to just what I was trying to elicit from you; if the final settlement and distribution of the money was made on the other side wouldn't it be made in conference on the other side? A. I don't know whether they made it; we had nothing to do with it except to forward the accounts and finally how they settled it we don't know. I never heard of it.

MR. SPOONER: And never cared? 2828

THE WITNESS: No, I didn't know anything about it.

Q. You said a moment ago that you did not know anything about the rebates being paid until a year or more ago when you went to the District Attorney's office and were shown some papers there? A. That is the first time I saw a rebate circular such as you have that I have seen here.

Q. You were familiar with the agreement which provided for an arrangement for a rebate system? A. Yes.

2829 Q. And notwithstanding your familiarity with it you never made any enquiry at all to ascertain? A. I had nothing to do with the homeward business except collecting the freight.

Q. Did you know that prior to 1908 and prior to the rate war—no, prior to 1908, that there was a rebate system established and in force for shippers for Hamburg, from Hamburg and Antwerp, Rotterdam, Amsterdam and Hamburg and Bremen? A. You mean outward?

Q. Yes? A. I know nothing about the European busi-
2830 ness.

Q. Do you know whether or not an agreement was made between the conference lines who were parties to that agreement and Royal Mail Company and the Chargeurs Reunis; do you know whether or not there was any agreement made with them? A. I don't know anything about that agreement.

Q. Mr. Gerhard, I show you here Government Exhibit 118, Notice to Shippers From Santos, 119, Notice to Shippers from Rio and Victoria, and Supplementary Notice
2831 to Shippers From Santos, Exhibit 123, and Supplementary Notice to Shippers From Santos, Exhibit 124, and Memorandum of Agreement, Exhibit 200, with reference to shipments and rates and rebates; when was the first time that you ever saw those, Mr. Gerhard? A. I don't know that I saw any of these before.

Q. Did your agent or the agent of the Prince Line there in any of those ports ever send you any copies of those rebate circulars? A. No. sir.

Q. So even of the contents of those you did not know anything? A. I don't know anything at all about these.
2832 Q. Did you have any notices to shippers as those ports issued by the conference lines? A. Never had any of those circulars. I did not know anything about them.

Recess taken until two o'clock P. M.

AFTERNOON SESSION.

PAUL F. GERHARD, recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Gerhard, in response to subpœna served upon you you have produced as I understand it, three contracts

made with the shippers and the Prince Line, where they 2833
were made for the joint account of the conference lines?
A. Yes, sir.

Q. But that you have not produced and have not got with you contracts made with shippers where they are for the individual account of the Prince Line? A. That is right, sir.

Q. Do you mean to say that the Prince Line does not make individual contracts? A. We do not make individual contracts for future shipments; we make bookings from month to month, which we do not call contracts, for 2834
our regular steamers.

Q. But future contracts are always made for the benefit of the conference? A. For the three lines.

Q. And that is the universal practice? A. Yes.

Q. And has been since 1908? A. Yes.

Q. I show you here what purports to be a copy of a contract on a form of a letter—the form of a proposition—to the Barber Asphalt Company, under date of November 4, 1912, signed Paul F. Gerhard Company, General Agents, and also marked "Approved, Barber Asphalt Paving Company." Is this one of the joint contracts? A. 2835
Yes, that is a joint contract.

MR. BALDWIN: I offer this in evidence.
Marked Petitioner's Exhibit 214.

Q. I also show you what purports to be copy of an arrangement of like nature with the Parsons Trading Company? A. Yes.

Q. Under date of April 26, 1911; is that another one of the joint contracts? A. That is another one of the joint contracts. 2836

MR. BALDWIN: I offer that in evidence.
Marked Petitioner's Exhibit 215.

Q. I also show you one under date of January 21, 1910 with Guinle & Company, is that another one? A. That is.

MR. BALDWIN: I offer that in evidence.
Marked Petitioner's Exhibit 216.

Q. That is another one of the joint contracts? A. Yes.

Q. Exhibit 214, which is the Barber Asphalt Company

2837 contract, this is a contract, although signed by Paul F. Gerhard & Company, General Agents, I suppose for the Prince Line? A. Yes.

Q. Is a contract which you entered into by each of you also for the benefit of the other conference lines? A. Yes.

Q. You say here: "We now beg to confirm contract made with you to-day for all of your shipments of Asphalt and Residuum" and so forth "under your control." Is that contract made upon the basis that they should ship all of that commodity to get that rate? A. Yes, sir.

2838 Q. Exhibit 215, which is the Parsons Trading Company; this is also a contract, although signed by Paul F. Gerhard & Company, as General Agents, and is also made for the benefit of the—— A. I think it is so stated in the letter, for shipments by different lines. I think it is so stated in the letter.

Q. It says here: "We beg to submit to you the following rates to cover your shipments of News Printing Paper and Pulp Board from May 26, 1911 until December 31, 1911." That was also upon the condition and understanding that all of their shipments—— A. Yes, and they
2839 wanted to be protected with a rate.

Q. In order to get that rate they would have to make all of their shipments by the conference lines? A. Yes, they agreed to do it for their own purpose, in order to be able to sell paper ahead and know what the rates are.

Q. Whatever their reasons were, it was that you made the rate conditioned on their sending all their shipments over your lines? A. The entire shipments, yes.

Q. Exhibit 216, dated January 21, 1910; in this you deal directly acting for the Prince Line and Hamburg-Ameri-
2840 can and Lamport & Holt, our joint service; is that different in any way from the others? A. No, sir, it is not.

Q. Sometimes you state it is for joint service and sometimes you say—— A. I think they all state it is for the different lines.

Q. No? A. It does not say anything about the other lines in it?

Q. No, 215 doesn't. You do in 214; in that you mention steamers of the other lines and a net service? A. Then it is an oversight; it is intended for all of them and is so understood.

Q. In each one of these contracts you gave you reported

them to the conference? A. Yes, we reported them to the 2841
conference.

Q. Were these rates quoted here, for instance, on steamers of the Prince Line and Hamburg-South American Line, joint service at $7.20 net, was that below or above the printed schedule rate? A. I could not positively state, but I think it was the tariff rate. I don't think there was any concession made.

Q. Why should you exact from them that they should ship all of their—— A. It is no exaction from them; they volunteered it, to give us all of their stuff, and they wanted 2842
to fix a rate for the year. They are just as interested, sir, to have it as we are to have their freight.

Q. Didn't you say a moment ago that you made this rate upon each one of these contracts based upon the condition that you would have all the shipments? A. Not based on it; we did not make the rate; we did not make the rate. I said that we made the contracts on condition, that it gets all of their shipments.

Q. Are you quite sure that the rates in these respective contracts you have just identified here are not concessions from your printed list? A. I think that most of 2843
those are concessions on the printed list, but I do not think the Barber Asphalt was a concession; I think that is the real tariff rate; I am not positive of it.

Q. But the others, you think it is possible they were concessions? A. Yes, I think they were concessions.

Q. That is to say, the Parsons Trading Company and the Guinle Company contracts? A. Yes, sir.

Q. What is the distinction, Mr. Gerhard, between contracts which were made for joint account and those made for individual acounts? A. As I have stated we do not 2844
make contracts for individual account; we make bookings as we call them for a month or two ahead for our own steamers.

Q. Which nobody is obligated to take and you are not obligated to receive? A. Those bookings are definite, of course, for these steamers. We do not even name the steamer. Always a shipment within three months we are at liberty to book without any special authority from the other lines. To make future contracts we must have authority.

Q. In other words, every contract for a definite time

2845 where the rate is fixed and determined in the contract you have got to have authority of the conference to make it, is that right? A. Yes, get it from actual cable authority. We cannot close those contracts without that authority.

Q. You do not get authority from the conference here, but from the conference abroad? A. Yes, from the conference abroad.

Q. Now, Mr. Gerhard, I show you Exhibit 179, which is the Standard Oil Company contract; what is it that distinguishes that contract at all from those which you call
2846 joint contracts? A. I see here all three lines signed it. I don't know that it made any—I think the obligation of the three lines is the same to carry the stuff. Why the three lines signed it, I could not tell you.

Q. Did you have any conference with Mr. Daniels at all about that? A. We conferred before making a contract.

Q. You did? A. We conferred and actually cabled to Europe for authority to close the contract.

Q. You notice this is a three name contract? A. Yes.

Q. And the others you identified in the general testimony is to the effect that where it is made by one it is for
2847 the benefit of all, and here you have one instance where you have each one of the conference lines signing that arrangement. Now, what was the necessity for that? A. Well, I presume it is on account of the large quantity of stuff to go forward, and no one line wanted to assume the —it is on account of the large amount of cargo to go forward; no one line wanted to contract individually with the Standard Oil for such a large quantity, but they wanted, I think, the signature of the other lines to that same contract, so that each line should carry its share.

2848 Q. You could have done it just the same? A. We could, but I suppose whoever commits the contract, it is Funch, Edye & Company, they wanted the Standard Oil not to hold them only for the fulfillment of the contract, but they wanted the Standard Oil to have a chance to claim on the other two lines also, and they probably insisted upon having the other two lines sign it.

Q. Did any lawyer ever say to you that it changed the liability of the two that did not sign it; one had authority to sign for all? A. No, I don't think we ever consulted lawyers about this matter.

Q. It was as a matter of extra precaution? A. Simply

a matter of precaution. The shipment of 600,000 to 800,- 2849
000 cases, that is a pretty large quantity, and no one line wanted to assume it as one individual.

MR. KIRLIN: Perhaps the Standard Oil wanted the signatures on it?

THE WITNESS: I don't know that, but I presume one individual did not want to assume it alone.

Q. Mr. Gerhard, I show you here the minute book, at paragraph 287; do you know whose handwriting that is? A. It is written to—— 2850

Q. Whose is it? A. Mr. Daniels'.

Q. That is Mr. Daniels' who was a witness here? A. Yes, Lorenzo Daniels.

Q. Will you just look at the contents of this and the context of it, and state whether or not the fact of this Standard Oil Company contract being a three signature contract was pursuant to any legal advice on the subject? A. I do not recollect this instance at all. (After reading.) I don't recollect that.

Q. Don't you recall, after refreshing your memory from 2851
that, that there was a discussion at that conference about the fact that some doubts had arisen as to the legality of the three signature contract? A. I have no recollection of this instance.

Q. None whatever? A. None whatever.

Q. Can you state by looking at that who was present at the conference—how often did you hold your conference meeting? A. Once a week.

Q. Were they pretty generally attended? A. All the three lines were represented.

Q. Every time? A. Every time. You see this is dated 2852
back in 1909. I do not recollect it. I have no recollection of that instance.

Q. What is the date of that Standard Oil contract? A. This is 1912. October 11, 1912.

Q. Do you remember the Singer Contract——

MR. KIRLIN: Is there anything on that memorandum, Exhibit 166, which refers in any way to the Standard Oil Company?

MR. BALDWIN: No.

Q. On page 130, of the minutes, paragraph 285, is a pen-

2853 cil memorandum of the form of the contract dated February 10, 1909. Immediately following that I find this memorandum at paragraph 286: "The Hamburg-American and Prince Line Agents will consult their principals as to their views of the form of the contract, they having received instructions that all contracts must be made in the name of the three lines and signed by each agent"? A. Yes.

Q. That refreshes your recollection that there was a discussion as to the form of the contract, and in order to make it legal you would have to have three signatures?
2854 A. No. This form is the result of our desire that these contracts should distinctly specify that they are made for the benefit of the three lines, so that each line could go to the contracting party and get its share of the cargo. One of these lines was very much inclined to make contracts individually, or tried to make them, and I was very much opposed to it.

Q. Which Line? A. The Lamport & Holt Line. Our mutual friend was very much inclined to try to make a contract, you know, in such a way, worded in such a way, that we could not go to the shippers and get our share of
2855 the contract, and I think it was through my instrumentality very much that we received instructions from the other side that all contracts must be made for account of the three lines.

Q. Whether they had the three signatures or not? A. Yes. On account the three lines should be named that we could go to the contracting parties and claim our share of the contract. That is the way that came up.

Q. As a result of your efforts to have things in this definite form, and protect yourselves, so to speak, I sup-
2856 pose this Exhibit 179, Standard Oil Company contract, was made in this form, wasn't it? A. That was probably made shortly after those instructions came, and after wards we did not continue to sign them.

Q. And this apears to be a three signature contract? A. Yes, that is because it came shortly after those cable instructions.

Q. Now, here is Exhibit 173, Mr. Gerhard, which appears to be upon the letterhead of Funch, Edye & Company, respecting the Singer Sewing Machine Company as shippers, and it is signed as follows: Funch, Edye & Company, per C. H. Betts, Agent Hamburg-South American Steam-

ship Company, and Hamburg-American Line Joint Service. Now, that contract made by them in that form was reported back to the conference, wasn't it? A. Yes. 2857

Q. And regarded by the Lamport & Holt and the Prince Line as having been made for their joint benefit? A. I think they are named in that contract.

Q. It is not signed that way? A. The Lines are named in that contract.

Q. Although this is a one signature contract? A. Yes, but the lines are named in it.

Q. You were satisfied with the one signature contract, provided the lines were named in it? A. Yes. 2858

Q. And then the absence of the lines being named in it, then you wanted the three signatures, is that it, for protection? A. I wanted protection, and I wanted at least these three lines named in it.

Q. You prepared a list, did you not, of the statements showing cargo carried by the Prince Line Steamers from Brazil to New York for the years, 1908, 1909, 1910, 1911 and 1912? A. Yes.

Q. Is that substantially complete? A. I consider it is perfectly correct, in every particular. I had it done by a competent man in my office who is accustomed to that kind of business. 2859

Q. Showing dates of the arrival, the steamers, the commodity bags and tons of coffee, and rubber in pounds, other cargo, total weight, cargo capacity, and short cargo tons? A. Yes, I consider those statements are correct.

Q. From 1908 down to and including December, 1912, that is right? A. Yes.

MR. BALDWIN: I offer them in evidence. 2860

Marked Petitioner's Exhibit 217.

Q. Mr. Gerhard, do you remember the United States and Brazil Mail Steamship Company? A. I remember them well.

Q. Are they in existence? A. Not now.

Q. Do you know when they started? A. They started, I think, in the summer of 1882.

Q. And where were their ports of departure? A. New York, and Newport News. That is, it was from New York only, and then from New York and Newport News. I was agent.

2861 Q. They went from New York to Newport News for coal? A. No. We received cargo there that came down from Richmond and Baltimore and also took coal there. I was the agent for that line in its entire existence from 1882 to 1892.

Q. What ports did it serve? A. We called at Pará; we went to New York, Newport News, St. Thomas, Barbados, Pará, Pernambuco, Bahia, Rio de Janeiro and Santos.

Q. What other lines here in New York were regularly serving the same ports? A. My recollection for those
2862 ports, it was only the Sloman Line.

Q. And that is the line that you testified a while ago was finally taken over by the German Line? A. Taken over by the Hamburg-American.

Q. You say it went out of existence when? A. I think it was in 1892; the fall of 1892.

Q. Do you know under what circumstances it went out of existence? A. Yes. The line went into the hands of a receiver. They had very wealthy stockholders, but when it came to a matter of re-organization those big men could
2863 not agree.

Q. What became of the ships, do you know? A. They were sold; some of them were sold to the Cuba Steamship Company, and three of them to the Panama Railroad Company. The *Advance* is still running. The *Advance*, the *Finance*, the *Vigilancia*, the *Seguranca*, and *Allianca*.

Q. Do you know when the Lamport & Holt Line first started in Brazil business from New York? A. The Lamport & Holt Line started some 50 years ago to run a triangular service from England or Antwerp out to Brazil, and the River Plate, back to Brazil. They would go to
2864 New York and across to Europe. They kept up that service until the American Line went out of existence, and then they dropped into the service southward from New York.

Q. That was about what year? A. In 1893. The end of 1892, I think.

Q. As a matter of fact, did not the Lamport & Holt first start their outward business from New York to Brazil in 1897? A. No, sir, I think earlier than that. I know they were earlier; 1893 it was they started.

Q. After they started they were the only line for some little period of time, weren't they? A. No, the Prince Line started right in.

Q. The same time? A. Just as soon as the American 2865
Line hauled out, the Prince and the Lamport & Holt Line started in.

Q. Do you mean by that that the Prince Line started in the same day or the same month or the same year, or what? A. Very soon after the American Line stopped running the Prince Line and also the Lamport & Holt Line started in. I could not tell exactly the date.

Q. What constituted the American Line? A. The American Line was a corporation; the United States and Brazil Mail Steamship Company. 2866

Q. This same line that went into liquidation? A. Yes, the same line, the United States and Brazil Mail Steamship Company.

Q. How long was it after the Lamport & Holt Line started before the Sloman Line entered into that service? A. The Sloman Line entered in much earlier than that. The Sloman Line entered into it about 1882, about the same time as the United States and Brazil Mail Steamship Company.

Q. Are you quite clear about that? A. No, I am not 2867
sure, but it is my recollection.

Q. Isn't it a matter of fact that the Sloman Line started after the Lamport & Holt Line started? A. Oh, no, I know positively not.

Q. I am speaking from here down? A. I am speaking of the down voyage. I know positively that the Sloman Line was running when we were the agents of the United States and Brazil Mail Steamship Company.

Q. Was there any conference agreement or agreement between the Sloman Line and the Lamport & Holt Line at 2868
any time after the Sloman Line or the Lamport & Holt Line started outward voyages from New York? A. An agreement was entered into very soon, I think, after they started, between the Sloman Line and the Lamport & Holt Line. That was in 1893, but we were talking of the Sloman Line prior to that.

Q. No, I said after the Sloman Line had started whether there was any agreement, and there was? A. Yes, there was an agreement.

Q. How long did it subsist? A. I don't recollect now.

Q. Did it affect rates and sailings and so forth? A. Yes.

Q. Any provisions made for pooling and rebates? A. I

2869 think there was a system of rebates at that time, but I do not recollect about pooling.

Q. Was the Prince Line a party to that agreement? A. Yes, they also came into that agreement.

Q. And they stayed in how long; how long did the agreement subsist, as long as the Sloman Line remained as a separate entity——

MR. KIRLIN: This is all subject to our objection.

A. It is so long ago I don't recollect the exact dates at
2870 all.

Q. State it to the best of your recollection? A. But the three lines after fighting for some months, they came together and entered into an agreement, and how long that existed, I don't exactly know.

Q. Didn't that agreement that existed between the Lamport & Holt and Sloman and Prince Line remain in force up until the time the Sloman Line was taken over by the Hamburg-American Line? A. That is my impression.

Q. And immediately ensued, as you testified before, this
2871 rate war? A. Yes, they did not recognize the Hamburg-American Line trade, and the result was a rate war.

Q. Now, Mr. Gerhard, during the time of this alleged rate war, the rates that were quoted by the large ships from New York outward varied very considerably, didn't it; they fluctuated from time to time? A. Yes, very much.

Q. And they were considerably lower than the printed tariff rate that had been existing before that time? A. Yes, very much lower.

Q. And there was no uniformity of prices charged by the
2872 competitors until the agreement of 1908, was there? A. Yes, much to the disappointment of the merchants themselves.

MR. BALDWIN: I move to strike that out.

Q. The point is, Mr. Gerhard, as a witness you are required to be responsive? A. Yes.

Q. If you will just remember that we won't have any trouble. Do you recall whether or not in 1897 and 1898 that the Prince Line headed into the Brazil business, or was it before? A. As I said, I think they commenced very shortly after the American Line dropped out, which was

in 1892, the fall of 1892; and I think they commenced then 2873
in the fall of 1892 or early in 1893.

Q. Who was the agent for the Prince Line at that time? A. John C. Seager.

Q. And as soon as they came there was a rate flurry, was there not, for some little time? A. Yes, very lively time.

Q. And the result of that was that the Sloman Line and the Lamport & Holt Line agreed to take them into the conference? A. As far as I recollect.

Q. And then that rate war, so-called, ceased? A. Yes. 2874

MR. KIRLIN: He has not said there was any conference before that.

THE WITNESS: I think, as I recollect, the three lines came together. There was no conference between two lines only; I think the three lines came to-together at the same time as I recollect it.

MR. MONTGOMERY: After a period of competition?

THE WITNESS: Yes, after a period of competition.

Q. Mr. Gerhard, under what circumstances and under 2875
what conditions did the conference lines make time contracts with shippers at rates less than the tariff rates fixed in the conference and established by the printed lists? A. I don't know of any particular circumstances. If we find any merchant is disposed to make a contract we submit it by cable to Europe and try to get authority to make it.

Q. What I mean is this, would the agents here have any authority to quote a rate less than the tariff rate on time contracts to any shipper unless first submitting it to the principals? A. No, we have no authority to act here. 2876

Q. And it has been the established policy, has it not, of the conference since 1908 never to quote less than tariff rates to any shipper unless he agrees to confine his shipments to the conference? A. Well, I don't know as we put it in that way.

Q. Isn't that the substance of it? A. When a merchant is willing to contract for all his shipments why we try to get authority by cable to make contracts with him.

Q. But in no instance have you made any contract with shippers at less than the tariff rates, unless it was conditioned upon his confining his shipments entirely to the

2877 conference? A. I don't know that it is so expressed conditioned upon that; it was simply for all his shipments, not the condition that he should confine his shipments; it was for all his shipments.

Q. Isn't that the same thing? A. I think there is a difference.

Q. What is it? A. Insomuch as the merchant wants to protect himself and know what rates he can offer goods at he will come to us and contract for all of his shipments.

Q. Have you got any instance where you have ever made
2878 a contract with the shipper at less than tariff rates where it was not conditioned on his confining his shipments to your conference lines? A. No.

Q. Then, as a matter of fact, you hold yourselves out generally to shippers to make special concessions from the rate, provided they confine their shipments to your line? A. No, we don't put it in that way at all.

Q. Whether you put it that way that is the real sum and substance of it, isn't it, Mr. Gerhard? A. Well, of course, we try to——

2879 Q. You can answer that yes or no, I think? A. Please read the question again.

(Question read.)

A. No, we do not hold ourselves.

Q. You do not? A. No.

Q. Have you got any single instance that you can refer to where you have ever granted a concession off of the tariff rate to a shipper, where he was at the same time shipping any of his commodities over any other line than the conference lines? A. I don't recollect it at the moment.

2880 Q. Isn't it a matter of fact, Mr. Gerhard, regardless of the viewpoint of either the shipper or the carrier, that it has been the universal practice to concede from the tariff rates to shippers only where the contract provides that all their shipments should be sent over your lines? A. We frequently made contracts for special lots of goods; it has not always, no, sir.

Q. I am speaking of time contracts? A. Well; just read that question to me again, if you please?

(Question read as follows:)

Q. Isn't it a matter of fact, Mr. Gerhard, regardless of the viewpoint of either the shipper or the car-

rier, that it has been the universal practice to concede 2881
from the tariff rates to shippers only where the contract provides that all their shipments should be sent over your lines? A. Yes.

Q. And the concession is not based upon the amount of the commodity at all, is it? A. It is very much based upon the quantity.

Q. Did you take that stand before the Investigation Committee in the House of Representatives? A. We are now talking of Brazil?

Q. Yes? A. I think you have reference to some remarks 2882
of mine that had reference to the River Plate trade.

Q. Agricultural machinery and things of that kind are commodities which are shipped generally here, are they not? A. Those remarks I made there apply particularly to the agricultural contracts to the River Plate. They distinctly state it there.

Q. Do the contracts to the River Plate differ from those that are made—I am speaking of time contracts—from those made to Brazil? A. Yes.

Q. In what respect? A. We make them individually. 2883
Each Line makes contracts for its own line.

Q. You mean for the River Plate? A. Yes. Quite different from the Brazil trade.

Q. Then the business from New York outward to the River Plate is an individualized business? A. Yes, an individualized business, yes.

Q. That to the Brazil ports is a joint business? A. A joint business. We have in the River Plate trade—the lines have——

Q. I have not asked you for anything more yet? A. That 2884
is all right, I always think I would like to give you the whole truth. I like to be explicit.

Q. You have a very good lawyer here protecting you on the other side of the table? A. I don't know much about law and I am willing to talk plain and give all the facts about it.

Q. Just be as responsive as possible. The River Plate service was an open service, was it not, before the conference was made—before the Brazil conference was made? A. Well, the River Plate has been open——

Q. Yes or no, was it or was it not? A. At times, yes.

2885 Q. Has it been subject to a conference since 1908? A. At times, yes.

Q. Since 1908? A. No written agreements, but verbal understandings.

Q. Between these same lines? A. Yes. The River Plate Line; not in the Brazil Line. That is a different service.

Q. No, do all of the conference lines, parties to this suit, do they engage in the River Plate business? A. No, sir.

Q. None of them? A. Two of them are.

2886 Q. Which ones? A. The Lamport & Holt and Prince Lines.

Q. The Lamport & Holt and Prince Lines have some other agreement with some other lines that are engaged in the River Plate business? A. Yes, a verbal agreement.

Q. What are they; for what line? A. The Barber Line, the Holder Line and the Houston Line, and the Prince Line and the Lamport & Holt; those five lines.

Q. How long has this verbal agreement been in existence? A. About a little over a year; about a year ago last January.

2887 Q. Do the boats that go from here to Brazil go on the River Plate Service? A. Some do and others do not.

Q. Then the River Plate business so far as the Lamport & Holt and Prince Lines are concerned is not carried on by separate steamers, but are the same steamers which operate on the Brazil Line? A. Some steamers we send direct to the river, others touch the Brazil ports.

Q. What of your own boats that operate in the Brazil trade, do you also operate in the River Plate service? A. We turn them around just as the occasion may present it-

2888 self; just as it happens that they fit in.

Q. If you have a ship starting from the Port of New York you take cargo for Brazil and the River Plate on the same boat, don't you? A. Sometimes we do; not always.

Q. It all depends on the amount you get for the respective places? A. Not only that, but it depends upon whether or not we want to send the steamer to Brazil or not; sometimes we send them to Brazil even if we could load them all right for the River Plate only.

Q. You have some reason of your own for that? A. Yes.

Q. So it frequently happens that some ships start with cargo for both services? A. Yes.

Q. And then that part of the cargo which would go to Brazil would be subject to this New York-London conference that affects the Brazil trade, and if the other went to the River Plate it would be subject to this other conference you have spoken of? A. Yes. 2889

Q. So, as a matter of fact, it goes out of here subject to those two conferences under those circumstances? A. Yes.

Q. None of it would be in what you call through trade then? A. No, I suppose not, if you have an understanding with the other lines. 2890

MR. KIRLIN: Both are protected trade governed by the tariff?

THE WITNESS: Governed by the tariff, that is right.

CROSS-EXAMINATION by Mr. Kirlin:

Q. What were the ports that you said the United States and Brazil Mail Steamship Company served? A. The itinerary was from New York to Newport News, St. Thomas, Barbados, Pará, Pernambuco, Bahia, Rio de Janeiro, and Santos. 2891

Q. And none of the present conference lines go to St. Thomas, Barbados or Pará, do they? A. Not now.

Q. Have they at any time—— A. We sometimes call at Barbados outward for coal.

Q. I mean as far as taking cargo is concerned? A. In fact those days the steamers did not take cargoes, but passengers to St. Thomas and Barbados, but no cargo.

Q. The steamers whose names you mentioned were all passenger steamers? A. Yes, and they called at St. Thomas for coal and Barbados for passengers. 2892

Q. And they served as far as the transportation of cargo was concerned the ports of Pará. Pernambuco, Bahia, Rio and Santos? A. Yes.

Q. At the time the agreement, Exhibit 1 was entered into, what cargo ports were being served by the lines then engaged in the service, this is in 1908? A. I think Pernambuco, Bahia, Rio de Janeiro and Santos; they might have called occasionally at Maceio, but I am not sure.

Q. Up to that time had there been any service at all to Cabedello or Maceio and to Victoria? A. I don't recollect.

Q. This agreement as evidenced by clause three of Ex-

723

2893 hibit 2 in the petition, contemplated service to Cabadello, Pernambuco, Maceio, Bahia, Victoria, Rio de Janeiro and Santos by name? A. Yes.

Q. And did it contemplate service also to other ports? A. I don't think so.

Q. Other ports have been served, however, since that by the conference lines, haven't they? A. I don't recollect their serving other ports; I don't think so.

Q. You mentioned San Francisco—— A. Those are southern ports; yes, they have been served.

2894 Q. What are the names of those ports? A. San Francisco do Sul, Desterro and Rio Grande do Sul; we have sometimes taken cargo for Antonina.

Q. Are all those four ports south of Santos? A. Yes, south of Santos.

Q. Then there was a service on at least a number of occasions to the port of Natal, where is that? A. Natal is five degrees south of the line. It is very far north, and the Prince Line only did send two steamers there, and we have since not sent any steamers to that port.

2895 Q. Have any of the other lines gone to Natal? A. No, sir.

Q. To finish up with Natal at once, how much of a port is it? A. Natal is——

Q. I mean so far as the commerce of this country is concerned? A. It is a very small place. I think there are not over three of four thousand people living in Natal and the whole district served by the port of Natal does not exceed about 12,000 inhabitants. There are no railroads there and it is such a small port and it is a dangerous port to enter, and we did not consider it worth while to send

2896 steamers there.

Q. You went there, I suppose, because you were requested to carry certain cargoes? A. We thought of including it in the regular itinerary, and I was down there myself and I found it such a small place and so little inducement to go there that we have not considered it worth while to send steamers there.

Q. You said it was a dangerous port to enter? A. Yes.

Q. What is the danger? A. There is a rock at the entrance and our steamer the second voyage she made, the *Italian Prince*, struck a rock and was very seriously dam-

aged, and she had to discharge cargo there and the line de- 2897
cided we would send no more ships there.

Q. A rock in the channel? A. Yes, a rock in the channel. It was supposed to have been all blasted out, and the channel staked, but it don't seem to have been the case.

Q. What is the commercial importance of these other ports; let us have them up by name; Cabedello first? A. I could not tell you just how large a place that is. It is a very small port; it has a larger district to supply. A larger population around there. Cabedello really is a port for Parahyba; Parahyba is up the river and Cabedello is at 2898
the mouth of the river, where the dock is, and shippers discharge at the dock and that is the reason we go to Cabedello and don't go to Parahyba.

Q. Is there much cargo offering? A. No, it is a very small port. I think once in every two months is about as much as it is necessary to supply that little port.

Q. What kind of a port is Pernambuco? A. Pernambuco is a much larger port; that is one of the regular ports. There is a great deal of cargo there.

Q. Is Cabedello served frequently as the commercial demands reasonably call for? A. Oh, yes. 2899

Mr. Baldwin: I object to that as a conclusion.

Q. You take care of all the cargo that offers for Cabadello? A. We intend to take care of it; we have not done so for sometime, but we have scheduled steamers for them.

Q. You have included those two ports in your regular schedule, have you? A. Yes, Sir.

Q. When did you begin to advertise those two ports? A. About a month ago.

Q. And that was for the purpose of enabling merchants 2900
to make forwarding arrangements for those ports? A. Yes.

Q. And count upon a regular service? A. That is the idea.

Q. Cabedello and Maceio are the two? A. That is a small port.

Q. Maceio, what country does that serve? A. I could not tell you; it is also a small port, a little larger market than Cabedello, but it is also a small port.

Q. Prior to including Cabedello and Maceio in your regular ports what were the four that you said you went to

2901 regularly? A. Pernambuco, Bahia, Rio de Janeiro and Santos.

Q. Victoria is another port mentioned in the agreements? A. It is a small port.

Q. What kind of a port is that? A. It is a small port.

Q. How often is that port visited? A. Oh, I think about once every two months is all that that port needs; it is not a regular port, but we do supply it.

Q. Do you supply the tonnage required by shippers to that port? A. Yes, the conference lines——

2902 MR. BALDWIN: I want to object to this line of examination on the ground that it calls for a conclusion of the witness. The best evidence would be what was offered and what the facilities were.

Q. You know what business is offering for Victoria, don't you, in the trade? A. Yes, we do.

Q. And do you take care of it? A. We do take care of it.

MR. BALDWIN: Same objection.

2903 Q. Furnish tonnage to carry it? A. Yes.

Q. And carry the tonnage there and deliver it? A. Yes, sir.

Q. Rio de Janeiro and Santos, are the largest ports, are they? A. Yes, those are the largest ports.

Q. When did you begin to serve these four ports south of Santos—when I say you, I mean the conference lines? A. I am speaking of the conference lines' service. I think it was in 1908.

Q. Have you been to those ports? A. I have been to San Francisco and also Rio Grande do Sul.

2904 Q. What is the relative commercial importance of those ports as compared with the other? A. San Francisco is a small market, and I think once every two months is all that that port needs; Rio Grande is a much larger market and there we have sent at times two steamers a month, but at present it is one steamer a month.

Q. How about Desterro? A. Desterro is a small port.

Q. And Antonina? A. A very small port; it is too shallow for our boats and we don't go there at present.

Q. When you speak of sending vessels to these minor ports, as you have described them, do you get a whole shipload for the port? A. No, sir.

Q. Any of them? A. Those ports are small ports, shal- 2905
low; there isn't much water there and a steamer could not go in with a full cargo.

Q. So you take as much as offers for each port and go to a number of ports with the steamer? A. Go to a number of ports, yes.

Q. Prior to the time that the conference lines' steamers began to serve these ports, Cabedello, Maceio, Victoria, San Francisco do Sul, Desterro, Rio Grande do Sul and Antonina, was there any service to them directly from the United States ports? A. No regular service. The mer- 2906
chants used to charter sailing ships.

MR. BALDWIN: At what period of time is that?

MR. KIRLIN: Before they began to be served by the conference lines' steamers.

Q. They had no steamer service? A. They had no steamer service there, no.

Q. You have given us the names of four ports which are in your regular schedule prior to this year, and two other ports which have been added to it; what circumstances de- 2907
termined the frequency with which steamers were despatched to the other minor ports? A. It depends on the amount of cargo offered which would be an inducement to send a steamer.

Q. That is whether it would be enough to—— A. To make it an object to go in.

Q. To pay the port expenses and other expenses incident to making the smaller port? A. That is it.

Q. And whenever there was sufficient cargo to do that has it been the policy of the lines to furnish a steamer for 2908
those ports? A. Yes, that is our policy; that has been our policy.

Q. And it has gone there with steamers? A. Yes, sir.

Q. Under those circumstances? A. Yes.

Q. How far back does your knowledge of the Brazil trade extend? A. I have been in the business here since 1867—January, 1867, and ever since I have been identified with the South American trade, Brazil and River Plate.

Q. Was there any steamer service to Brazil prior to 1882? A. Yes, there were several lines. One line was the Garrison Line an American Line, and when they stopped

2909 the Mallory Line took it up and continued running steamers until the subsidy stopped and they lost the American subsidy and then they stopped running steamers.

Q. Why did the Garrison stop? A. I don't know that.

Q. When did the Garrison stop? A. The Garrison, I don't know when they stopped, but the Mallory stopped in, I think, in the spring or in the fall of 1881 or the spring of 1882; I guess in the spring of 1882 they stopped running. It was then when we commenced to lay on steamers for Brazil, just as soon as the Mallory Line hauled off.

2910 MR. BALDWIN: Whom do you mean by "we"?

THE WITNESS: Well, it was the merchants here; a firm called C. McCulloch, Beecher & Company, with whom I had an arrangement to lay on sailing ships for Rio de Janeiro and picking up cargo in the market and despatching sailing ships, when the Mallory Line hauled off their steamers—when the Mallory Line hauled off their steamers Mr. Beecher decided to charter steamers and lay them on. It was a little too much for me; I did not care to run the
2911 risk, so I loaded the steamers for the account of C. McCulloch & Beecher. That was the beginning really of the American Line. He then went to work and organized the United States & Brazil Mail Steamship Company, of which John Roach was the president, and Mr. C. P. Huntington, was one of the rich stockholders, and H. K. Thurber and a number of others, and Charles Pratt.

Q. Did they get a subsidy for their line?

2912 MR. BALDWIN: How is that material? I object to that.

MR. KIRLIN: It is history.

A. They did get a subsidy. It was based on a certain speed, and I don't think they were able to carry out that speed except in a few voyages, so that they did not actually get much benefit from it.

Q. But the subsidy remained open to them during the whole time they were there? A. It was open to them whenever they could prove themselves—the conditions of the subsidy.

Q. They had five steamers of American register of the 2913
names you have given? A. Yes.

Q. And about the time they started I think you said the Sloman started, did you? A. Yes, they started about the same time.

Q. Started in the north and southbound service between New York and the same Brazilian ports? A. Yes, as far as I recollect.

Q. Did the United States and Brazil Mail Steamship Company operate any foreign vessels in that line in addition to the five American vessels? A. We did, yes. Not 2914
the first few years but we did in later years of existence; we had something like 12 or 15 steamers chartered on time charters.

Q. That is, you hired the vessels by the month or by the year? A. Yes, time charters.

Q. And operated them as the United States and Brazil Mail Steamship Company vessels? A. Yes, in the line.

Q. Those two companies as I understand it did all the southbound business until the United States and Brazil Mail Steamship Company failed in 1892? A. I think there 2915
was another line running to Pernambuco, as far south as Pernambuco; I have forgotten the name of it; I recollect the agent's name was Borland.

Q. At some time between 1882 and 1892, which you do not exactly recall, Lamport & Holt's triangular service entered into the northbound service from New York to Brazil? A. Southbound.

Q. From Brazil to New York? A. They have been at that—I think they have been at that over fifty years, this triangular service, you know.

Q. That included a voyage from Brazil to New York? A. 2916
From England out to Brazil and River Plate and back to Brazil and New York.

Q. Then Lamport & Holt were running northbound during the same time—the whole time—— A. Yes, over fifty years.

Q. That the United States and Brazil Mail Steamship Company and Sloman were running up to 1892? A. Yes, running north.

Q. Then in 1892 the Prince and the Lamport & Holt Lines began to work both ways? A. The Lamport & Holt

2917 began to run both ways, but the Prince had nothing in the Brazil trade at all up to that time.

Q. They began then? A. Yes.

Q. Did they come in with an original service from New York to Brazil and back? A. Yes, as far as I recollect.

Q. So that from the end of 1892 or 1893 there were three lines operating in the northbound and the southbound service? A. Yes.

Q. And that method of operation and the same number of lines continued until the Sloman went out and the Ham-
2918 burg-American Line came in, about 1906? A. I think about that, yes.

Q. And that is the history of the service, is it? A. That is the history of the service.

Hearing adjourned to Monday, May 19th, 1913, at 10.30 o'clock A. M.

New York, May 19th, 1913.

By consent hearing adjourned to Thursday, May 22nd,
2919 1913.

New York, May 22, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

Same as at last preceeding hearing.

JOSEPH PURCELL recalled.

2920 DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Purcell, when you were here the other day I was asking you about the rates quoted by the Lloyd Brazileiro for one steamer, the *Tapajoz*, 25,000 bags from three ports, and you testified that that was a chartered rate which the Lloyd Brazileiro had quoted you and later you testified that it was not a charter rate? A. Quite correct.

Q. Now, you meant by that when you said that the rate was a charter rate you were in error? A. Yes.

Q. And that the fact is that the rate was a rate per bag for 25,000 bags? A. Yes.

Q. From three ports? A. Yes.

Q. And not a charter? A. Yes. 2921

Q. That is the fact? A. That is the fact that cable shows.

Q. And you were in error when you said it was a charter? A. Yes, I had in mind other cables that referred to charters.

PAUL F. GERHARD recalled.

CROSS-EXAMINATION continued by Mr. Kirlin:

Q. Mr. Gerhard, I think you want to make a correction 2922
in your testimony in regard to the number of vessels you have sent to Natal? A. Yes. I stated we sent two steamers to Natal and recollect now that we actually sent three steamers, the third steamer simply went to Natal to take forward a quantity of gold we had on board the *Italian Prince* when she came to grief, and we sent the *Castilian Prince* to Natal to take that gold forward to Rio de Janeiro. I forgot the *Castilian Prince* when I said that we had only two steamers. Then I found several slight errors in my testimony which I made a memorandum of—— 2923

Q. We will take those up afterwards? A. All right, sir.

Q. I think you also stated in reply to Mr. Baldwin that the tariffs that were put into force after the formation of the conference though based on the European tariff was in fact made in New York; do you mean by that to say that the agents in New York exercised any independent discretion in fixing the rates in that tariff? A. No, sir; I already stated that the tariff was made by instructions from Europe; the rates were actually made in Europe; we merely transposed those rates. 2924

Q. Converted them? A. Converted them from sterling into American money. Now, I don't know whether that was the case when we first went into the conference, or whether it was an old tariff that we revised when we first started; I don't recollect, but it was all done—the rates were not made by the agents in New York except for staple articles that I have already mentioned; otherwise rates were all actually made in Europe.

Q. And always have been, have they? A. Always have been.

Q. Your work here of putting out the tariff was merely

2925 Q. You had no interest as a principal in this conference in any way? A. No.

Q. Received no profits from it? A. Simply the commission for attending to its business; no other profits.

Q. You simply attend to the business of the loading agent in port? A. Yes.

Q. Paid on a commission basis? A. Yes; paid on a commission basis on the freight, that is all.

Q. Prior to the service of the notice to Lamport & Holt terminating the pooling agreement dated the 8th of July,
2926 1908, which notice is Exhibit 3 in the Petition, had you anything to do with the administration or settlement of any pooling? A. No, sir.

Q. Did you conduct the business of agents any differently—— A. No, sir.

Q. Before that than since? A. No, sir. The only difference is that while the pooling arrangement was in existence we handed the copies of our freight list to the secretary.

Q. Did you hand any money to the secretary? A. No,
2927 sir, no money except his own compensation for salary and so forth.

Q. You handed him no freight? A. No freight whatever.

Q. What was your method of dealing with the conference, between you and your principal? A. As we have always done; as soon as the inward freight is collected the account is made up and we remit the balance to Europe, to the home office at New Castle, the Prince Line office at New Castle-on-Tyne.

Q. And you do that now? A. We do that now, just the
2928 same way.

Q. And the only difference between the administration of the funds that came into your hands prior to the service of this notice and now is that while the pooling agreement was in force you gave a copy of your freight list to the secretary of the conference? A. That is all.

Q. Do you know as a fact where the pooling was accomplished? A. I do not, sir.

Q. Do you know whether it was or was not done here? A. I know it was not done here in New York.

Q. That is, the pooling agreement was neither made here nor was the pooling done here? A. Yes; neither made nor done here.

Q. Now, Mr. Gerhard, you were asked a number of ques- 2929
tions about contracts and whether you guaranteed special rates in consideration of exclusive patronage, and you were requested in regard to some of the questions to answer yes or no; do you wish to make any further statement with regard to those contracts and those questions about special rates?

MR. BALDWIN: What contracts?

MR. KIRLIN: Contracts with shippers.

MR. BALDWIN: I submit that the offer of an ex- 2930
planation is so indefinite, not relating to any particular contracts, that this witness was examined on specific contracts which were exhibited to him and asked with reference to whom they applied, whether joint or individual, and I submit this examination in regard to that is not proper.

MR. KIRLIN: You did not ask about contracts with special people.

MR. BALDWIN: I had them in my hand.

THE WITNESS: There is the question I was asked and I was compelled to answer yes or no. 2931

Q. At page 1229 of the record you were asked this question: "Isn't it a matter of fact, Mr. Gerhard, regardless of the viewpoint of either the shipper or the carrier, that it has been the universal practice to concede from the tariff rates to shippers only where the contract provides that all their shipments should be sent over your line," to which you answered "Yes." Now, do you wish to make any further explanation? A. I answered yes because it was pre-
emptorily demanded from me to give an answer yes or no. 2932
I hesitated to do so because it gave a wrong impression of what we are doing. It would indicate that we were giving freight rates in consideration of exclusive patronage. I wish to deny, or I wish to assert most positively that we never have invited an offer or made a contract at a reduced rate in consideration of exclusive patronage. We never have done so. We have simply—we have in fact—we make no contracts for general cargo with any of the merchants at reduced rates for any length of time. We do make contracts with merchants who desire to book special articles at specified tariff

2933 rates for a period not exceeding three months beyond the current month. Furthermore, we make contracts—there are some merchants and some corporations that operate under Brazilian concessions that want—that desire to make certain contracts, make contracts in Brazil for delivery of articles during the year, and these men desire to make contracts for their shipments. We would ask them what quantity is it, state your number of tons you wish to ship. They reply it is utterly impossible to state beforehand the quantity of tons we are going to put up for con-
2934 struction. We are going to—some concerns want to put up an electric plant, and another concern wants to put up a tramway, another one to build a railroad. These people tell us we don't know the quantity, we cannot specify the quantity, but we want a contract for what we have to ship on certain terms. We consider that such concerns as are shipping machinery, electrical goods, all articles that do not go on the market to interfere or compete with other merchants' importations, we consider those large quantities of goods, we are perfectly justified in making lower
2935 rates than tariff rates, and we do so, and I consider that when they simply say for all their goods——

MR. BALDWIN: I object to a statement about what you consider.

A. (Continuing.) For all the goods; it was not done with any intention to permit them to take no other goods outside, but simply because they cannot state in tons how many tons they have to ship. That is the reason.

Q. Are these contracts for all the shipments of the merchants during the period covered by them, contracts that
2936 are sought by the merchants, or are they contracts that are sought by the lines?

MR. BALDWIN: I object to that as asking absolutely for the conclusion of the witness, and also immaterial.

A. These contracts——

MR. BALDWIN: My objection is that a man cannot say another seeks something. What did the other say would be competent, legal evidence.

MR. KIRLIN: I think he can say it.

A. (Continuing.) These contracts are frequently sought 2937
by us. I should consider myself a very poor agent if I knew that a big concession had been granted in Brazil, and I heard by Thomas Jones & Company of New York, if I did not rush around to Thomas Jones' office and solicit the business. I think I ought to be kicked out of the office if I didn't attend to my business and run after Thomas Jones & Company. So I am very quick if I hear of anything coming into the market, and go very quickly after that man.

MR. BALDWIN: Has this all got to go into the 2938
record?

THE COMMISSIONER: I don't think so.

MR. BALDWIN: I think we ought to strike out of the evidence all of the statement of the witness that is not directed to the question asked. Whether he considers himself a good or efficient agent to rush around and get business, what has that got to do with the issues here? I ask to have it stricken out; it is absolutely immaterial to any question here.

2939

Q. Now, Mr. Gerhard, when you learned of contracts of this kind being in the market, you, as you say, attempted to obtain them, that is, the carriage of the goods? A. Yes, sir.

Q. Do you impose any condition in such a case that the merchant must ship all of his shipment over your line in order to get your rate?

MR. BALDWIN: I object to that; the written contracts speak for themselves and are the best evidence. What was said and not what his conclusion may be 2940
from what was said.

Q. The question is whether you demand—— A. We make no demand of that kind.

MR. BALDWIN: That is subject to the same objection.

Q. Which of the two parties to that kind of a contract in your judgment derives the greater benefit from a time contract?

2941 MR. BALDWIN: Object to it as absolutely immaterial, incompetent and irrelevant, and asks for the barest conclusion of the witness.

A. It is evident that the facilities the lines offer to such contracting parties is the greatest benefit to the trade, for if the lines were not ready to make those contracts the merchants would be unable to forward their goods as required by the contracts they may have entered into in Brazil.

2942 MR. BALDWIN: I ask to have it stricken out.

Q. And without the facilities which the conference offers would these merchants be able to make such contracts for the erection of large power or railroad plants in Brazil?

MR. BALDWIN: Same objection.

A. No, sir, they could not.

Q. On the other hand, without forwarding contracts
2943 for large tonnage on the books would it be possible to operate such a large number of steamers with regularity between the United States and ports in Brazil.

MR. BALDWIN: Same objection.

A. No, sir, it is evidence that the large contracts on the books enable the lines to put on a large number of steamers and better steamers than they could without such contracts, and the furnishing of these regular facilities is a great benefit to the entire trade, to all merchants en-
2944 gaged in the Brazilian trade.

MR. BALDWIN: I ask to have that stricken out on the same grounds.

Q. If you did not have cargo engaged or contracted for in advance what despatch, comparative despatch, would you be able to give them—ships? A. It is difficult to say.

MR. BALDWIN: Can I have my objection for all purposes to this last testimony so that I will not have to put it in each time?

MR. KIRLIN: Yes.

A. It would be utterly impossible to load steamers of 2945
the size we have, ranging from 6,000 to 10,000 tons in the alloted short time unless we were in position to make contracts for future shipments; we would have to give up the business.

Q. Now, unless you load them in short period can you maintain any regularity in the sailings? A. In our service—we certainly can.

Q. (Question read.) I don't think you understood the question? A. No, we could not maintain the regularity of sailings. I misunderstood the question. 2946

Q. If you did not have large blocks of tonnage engaged in advance, explain a little more in detail what the routine would be? A. The routine would be that the steamers would be on the berth indefinitely and finally would have to sail probably with a spare space in her.

Q. That is, it would have to wait here much longer to take up cargo? A. We would simply have to give up the business; we could not hold steamers here any length of time.

Q. Or they would have to go partly empty? A. Which 2947
would not pay, and the result would be to haul the steamers up in the berth.

Q. And with one vessel lying on the berth awaiting her cargo like that, would that affect the loading? A. It naturally would interfere with the loading of other steamers.

Q. And in that way the regular despatch of steamers which is now good would be interfered with? A. It would be very much interfered with, yes.

Q. Mr. Gerhard, won't you state in your own way as 2948
briefly as you can what you consider to be the advantages which this conference offers to commerce between the United States and ports in Brazil?

MR. BALDWIN: This is subject to my objection—general objection—and the further objection that he can only speak from the viewpoint of himself as agent.

A. It enables the lines to furnish regular frequent communication with Brazil and thereby offering the vessels to the merchants to get their goods off promptly. It en-

2949 ables us to furnish better steamers, faster steamers, steamers that insure at lower rates than the ordinary tramp steamers; the cargoes insured by these steamers at lower rates than the ordinary tramp steamers; it enables us to maintain steady rates and avoid thereby the constant fluctuation in rates of freight, which is as disastrous to the merchant as to the steamship; it enables us to regulate these rates by taking as the basis the European rates and by so doing placing the American merchant on as favorable basis in the Brazil market as the 2950 European merchants are; it enables us—when lines are permitted to confer or have an agreement between themselves, it enables us to make contracts with merchants who have such large quantities of merchandise to go forward that no one line could handle it alone; such merchants are enabled to come to one of the agents of the three lines or four lines and obtain rates for the entire shipment, which is a very great advantage to the merchant.

Q. That is, with the privilege of shipping over all the lines? A. Over all the lines.

2951 Q. Distributing shipments as they may require? A. Yes, just as they may require. They always find steamers ready to take their goods. It enables these merchants when the goods arrive from the west, arrive at New York, to relieve themselves of all care and expense which often occur in the detention of cars and lighters when the steamers are not ready to receive the goods. Merchants so contracting know all they have to do is notify the agent, the quantity they wish to ship and the steamers are named to them that will receive the goods. That enables us to hire large wharves and offer facilities to the merchants to send 2952 their goods right to the wharf, even if steamers are not ready to receive them, thereby saving expense for demurrage on lighters and cars. It enables us to arrange a schedule for steamers going to different ports so as to avoid unnecessary calling of steamers at the smaller ports where there is very little cargo going forward. We can arrange and notify merchants in advance we shall despatch a steamer on a certain date to one of those smaller ports, so that he can get his cargo ready and actually solicit orders for that port and by so doing avoid the unnecessary expense that the steamers would be put to if

each one booked for the same small ports, and no one 2953
steamer would get sufficient cargo to make it an object to go there. Those are about the principal points I think of.

Q. What do you say as to the development of the trade between this country and Brazil since you began to operate under the conference in 1908? A. I don't catch that.

Q. Has it been assisted in any way by the conference? A. The fact of furnishing regular communication with the different ports in Brazil certainly assists in building up the business. The proof is in the increase of the number of steamers that have been sent forward in recent years. 2954

Q. You have furnished in this list, Petitioner's Exhibit 212 for identification, list of the steamers despatched from New York to the various ports in Brazil, from and including 1908 to 1912, it shows a very great increase in the number of sailings; has there been also an increase in the size of the vessels since 1908? A. There has been a very great increase in the size of the ships. When in 1893 I took over the outward freight agency of the Lamport & Holt Line we had some steamers that carried only 68,000 to 70,000 cubic feet; one of our biggest steamers was the *Wordsworth*, carrying 130,000 cubic feet. At present our smallest steamers are of about 220,000 cubic feet capacity, and they run up to 400,000 cubic feet capacity. I would like to add something else; I wanted to state at that time we despatched I think only two steamers a month. Now, each line despatches two steamers a month. 2955

Q. Have you had any new steamers in your own service since 1908, the Prince Line? A. The most of the steamers now in the trade are new steamers, built since 1908; some of them are older, but most of the steamers in the trade are recently built. 2956

Q. The Prince Line steamers? A. The Prince Line steamers, yes. I am speaking of Prince Line steamers.

Q. How do the newer steamers compare in size, carrying capacity and speed with the older steamers? A. The carrying capacity, I have just stated, the size; as regards speed the old steamers used to go eight and a half to nine knots, possibly ten; now our steamers go from ten to twelve knots.

Q. How about the other lines of this conference; has there been any improvement in their tonnage since 1908?

2957 A. Well, those lines in the conference have built new steamers; a number of the steamers now in the Brazil trade are recently built.

Q. So that the increase in the number of steamers despatched does not show the full amount of the increase in the tonnage provided—— A. No, sir.

Q. Year by year? A. Not by any means.

Q. Now, Mr. Gerhard, you have stated certain advantages which in your judgment accrue to the trade as the result of conference arrangement now existing and which it
2958 is thought in this proceeding to do away with; is there any other way that you can see, judging from your experience —of how many years in this trade? A. Since 1882 in the steamship business.

Q. Thirty-one years—by which those advantages can be obtained or accomplished? A. No, sir.

Q. Can they be accomplished by open and unrestricted competition? A. No, sir. I consider the only way the steamship business can be run successfully is by conference.

2959 Q. You say successfully; do you mean from the viewpoint of the owners or from the viewpoint of the merchants? A. The viewpoint of the owners as well as the viewpoint of the merchants, for the owners unless they can obtain paying rates could not afford to furnish the steamers and, consequently, the merchants would be deprived of the facilities to forward their goods.

Q. Would commerce be improved or retarded in your judgment by doing away with the existing arrangement? A. It would be very much retarded.

2960 Q. Do you come in contact yourself with the merchants who are engaged in shipping produce from this country to Brazil—— A. Yes.

Q. Over the conference lines? A. Yes.

Q. How extensive is your acquaintance with them? A. It extends over many years. My acquaintance with them extends over many years; I am personally acquainted with most merchants in the trade.

Q. Have you any complaints from merchants with regard to the service that is afforded? A. I have not.

Q. Or other complaints with regard to your rates? A. I have had no complaints. We have sometimes merchants asking us to name a lower figure, which, of course, they are

very apt to do, but they have really not complained of our existing rates. 2961

Q. Have you had competition during the period of this conference? A. We have now, certainly.

Q. The Lloyd Brazileiro I suppose you refer to? A. The Lloyd Brazileiro and occasional steamers chartered by other parties.

Q. How do their rates compare in a general way with yours? A. I don't know.

RE-DIRECT EXAMINATION by Mr. Baldwin: 2962

Q. Mr. Gerhard, at the last hearing in answer to a question of Mr. Kirlin you stated that prior to the conference, at the time the conference line steamers began to serve the ports of Cabedello, Maceio, Victoria, San Francisco do Sul, Desterro, Rio Grande do Sul and Antonina that there was no regular service to those ports from the United States? A. As far as I recollect, yes.

Q. And do you say positively that that service was entirely served by sailing ships? A. To my recollection yes, in those days. 2963

Q. And you further stated that prior to the conference lines serving those ports there was no steamer service whatsoever. Now, wasn't that service practically served by transshipping cargo from Rio to those ports? A. I couldn't say anything definitely on that subject because I was not at Rio to see it done.

Q. You have stated so positively in answer to Mr. Kirlin's question that those ports were not served that I am again asking you the question to see if you cannot refresh your recollection? A. Regularly from New York I had reference to. 2964

Q. Wasn't it a matter of fact that prior to the conference serving those ports that the goods destined for those ports were transshipped at Rio and served by the steamer lines? A. I don't think so. I think that most of the goods were sent forward by sail, and it was only some exceptionally valuable goods or merchandise that might possibly have gone forward on a through bill of lading, and that only in small quantities according to my judgment. But I am in no position to say anything positively on the subject.

Q. Upon what do you form your judgment as you have

2965 now expressed it, if you have no knowledge about it? A. Knowledge about what?

Q. About those ports being served directly? A. I have the knowledge because we used to charter sailing ships constantly for all those small ports.

Q. Before that time? A. Yes, before steamers commenced to run regularly.

Q. When did the steamers commence to run regularly? A. I could not tell you; I don't recollect the date.

Q. You know as a matter of fact there was a line running
2966 regularly from Rio to those ports and that goods were consigned directly to those ports to be transshipped from New York, and that was the course of business that obtained many years? A. No, I didn't know it.

Q. You would not say positively that is not so? A. I don't say they are not running, but I just said that I could not state what shipping was done from Rio because I was not there; I am speaking of New York shipments.

Q. Isn't it even now during this conference era that goods were shipped that way from New York? A. That
2967 may be; not to my knowledge. There may be goods going forward that way I don't know about. I have no way of knowing it.

Q. When were those three times that you sent boats to Natal? A. The first steamer went in August, 1908, I recollect it well, because I was a passenger on it; but I don't recollect the exact time of the second voyage. The steamer went there the second time I think some six or eight months later, but I am not sure of the exact time.

Q. And the third? A. The third went—after we heard of
2968 the disaster to the second voyage we sent the steamer that left New York immediately after that, ordering the captain to call at Natal.

Q. About when was it, if you cannot state the date; what year or month as near as you can? A. I think it was in the spring of 1909, but I am not sure.

Q. Since then you have not served at all? A. No, I have not. The first voyage I recollect distinctly.

Q. That port is being served regularly by the Booth Line, isn't it? A. So I assume.

Q. And in pursuance of an arrangement made with the Hamburg-American Line, is that right? A. I don't know

whether it is in pursuance of such an arrangement; I don't 2969
know of it.

Q. Wasn't it done at the same time and in pursuance to the agreement where the Hamburg-American Line withdrew its boats from the North Brazil ports? A. Not to my knowledge.

Q. Now, with reference to the service to these minor ports, how many of them now are served by the conference? A. Cabedello, Maceio, Victoria, San Francisco do Sul, Desterro, and Rio Grande do Sul.

Q. Do you state that the business of those ports is in- 2970
considerable? A. The business for all those ports except Rio Grande is small.

Q. Do you know whether now those ports are served by the Lloyd Brazileiro? A. I don't know, sir.

Q. I suppose as a vigilant agent for your line that you make it your business to ascertain pretty generally the necessities of the business offered to all the ports down there, don't you? A. We do, yes.

Q. And yet in spite of that you say you don't know that those ports are being served regularly by the Lloyd Bra- 2971
zileiro? A. I don't know it; I don't watch those steamers so closely.

Q. Not so closely as that? A. No; I see a steamer cleared and that is the end of it.

Q. And Victoria was always served prior to the conference, wasn't it? A. Victoria, it is only in recent years that the steamers have been getting freight for Victoria as far as I recollect. It has always been a coffee port for ships to bring coffee north, but the exports from New York to Victoria are very light.

2972

Q. When did these exports to Victoria begin, you said recently? A. I could not tell you; I don't know.

Q. Did it exist before 1908? A. I don't recollect, sir. I don't think it is much before that. That is, according to my recollection.

Q. How were Rio Grande do Sul and San Francisco do Sul served prior to the conference? A. In the olden times entirely by sailing ships.

Q. Well, within the three or four years immediately preceding the conference? A. Oh, it has been longer since steamers commenced to go to Rio Grande.

Q. As a matter of fact hasn't there been a coasting line

2973 serving those two ports for a number of years preceding —I mean a steamer line—preceding conference? A. I am not acquainted with the coasting line in Brazil.

Q. At those two ports particularly and in contiguous territory are a large number of German colonists, aren't there? A. Yes, in that part of Brazil.

Q. And those ports have been served very largely by the Hamburg-American Line, have they not? A. The Hamburg-American Line has been sending steamers to Rio Grande and also to San Francisco and Desterro for a
2974 number of years past.

Q. Did they serve those ports before the conference? A. I think they did.

Q. Are you quite sure about that? A. I am expressing —I said I think they did.

Q. Now, in the arrangement of this conference business didn't it turn out that the Hamburg-American Line was to practically serve those ports upon their agreement to withdraw their service northbound to New Orleans and the Gulf ports? A. I don't know, sir.

2975 Q. What was the reason that you say that the conference steamers gave up serving the port of Natal? A. Well, the principal reason, it is a very small market; it hardly pays for a ship to go there, and, secondly, there is a reef in the entrance to the harbor which is very dangerous.

Q. A harbor obstruction? A. A harbor obstruction.

Q. That same port has been served notwithstanding the obstruction by other lines, hasn't it? A. Yes, the Booth Line I believe came to grief there only a short time ago.

Q. It is not infrequent for the boats to come to grief in almost any harbor, is it? It happens here in New York,
2976 doesn't it? A. Not a reef as it exists in that channel; that makes the harbor particularly dangerous.

Q. How many times has the Booth Line met disaster by reason of that reef? A. I don't know.

Q. You spoke of a recent occasion? A. The agent happened to mention to me he has a steamer now going on the dry dock; that is the way I happened to hear it.

Q. That is your first knowledge of it? A. The first knowledge.

Q. And the only knowledge? A. The only knowledge.

Q. And from that you infer that because of this obstruction the harbor is not navigable? A. It is navigable, be-

cause a great many steamers go there, but it is not the port —we do not consider the port safe to go there and consequently do not send our ships there. 2977

Q. If the port had large business you would not consider that obstruction sufficient to deter you, would you? A. It would not be for me to decide; it is for the owners in Europe to decide.

Q. The reason I am asking you this question is because you stated in answer to a question of Mr. Kirlin that one of the reasons for abandoning the running of this line of service to those ports was due to this dangerous reef or obstruction in the harbor? A. Yes. 2978

Q. Now, as a matter of fact, you do know, don't you, that the Booth Line steamers have been serving them regularly, and other steamers also? A. A large number, yes; but I spoke of the Prince Line more particularly, because I received definite instructions from Europe to send no more steamers to Natal and on that I based my answer as I did.

Q. Did the instructions state any reason for it? A. No, sir, but the instruction came shortly after the *Italian Prince* came to grief. 2979

Q. And from that you inferred that they abandoned because of that accident? A. Yes.

Q. So the Prince Line had been serving that port on and off for a good many years? A. No, sir.

Q. I mean before the conference? A. No, sir. We never had a steamer there before.

Q. Now, Mr. Gerhard, I understood you to say upon your direct-examination that once the tariff was adopted by the European conference and sent here that you had no authority to vary the rates in that tariff without first consulting your principals? A. Yes. 2980

Q. In Europe, is that right? A. Yes.

Q. Now, you have stated to-day that when merchants had concessions you would vary the tariff by quoting them lower rates providing that they would make time contracts, is that right? A. I don't think I stated it just that way. When we are offered large quantities the merchant or contracting party wishes to make a contract; we then cable to Europe and ask permission to make a contract and it is the owners that give instruction as regards what rates to make. We have no authority.

Q. You do not quite understand my question. You

2981 stated in answer to Mr. Kirlin's question that you would lower the rates in the case of these concessionaires who would agree to make time contracts; now, did I get that right? A. If I said that I did not wish to convey the idea that we did it on this side without consulting our principals. We do not do that.

Q. I do not mean to say you acted here without instructions, but under instructions? A. Yes.

Q. But to these concessionaires you would make a rate lower than the tariff? A. Yes.

2982 Q. Now, who were these concessionaires and what was the line of commodities that you would make the reduction on? A. Those reductions—we had made contracts for carrying all kinds of machinery, structural iron, railroad material, rails locomotives, cars, material for buildings and so forth; we also made contracts, which as you know, sewing machines with one concern, the Singer Company, and we have made contracts for paper as far as I recollect. We have shown it to you.

Q. You do not consider the sewing machine company and the exporters of paper were operating under special
2983 concessions? A. I stated in my reply that certain merchants and corporations were acting under licenses or concessions of the Brazilian Government.

Q. You do not then mean to include among those trading under the license the Singer Company? A. No.

Q. Or the dealers in cement? A. None of those are the merchants I had reference to.

Q. What particular ones had you in mind that were operating under concessions from the Brazilian Government? A. Guinle & Company, the Rio de Janeiro Tram-
2984 way, Light and Power Company, Rodney Chipp, who holds large concessions from the Brazilian Government for the construction of railroads and other matters as far as I know.

Q. Guinle & Company you say hold a concession? A. They hold a number of concessions.

Q. They export electrical machinery of various kinds, don't they? A. Yes.

Q. And structural material? A. Yes.

Q. And car material, paint and varnish and copper wire and lubricating oil? A. Yes, all the materials for construction purposes.

Q. All for construction purposes? A. Yes. 2985

Q. Every bit of it? A. Yes, as far as I know.

Q. Guinle & Company have an office here in New York? A. Yes.

Q. And did you seek out their business or did they come to you? A. I sought them.

Q. You sought them? A. Certainly.

Q. And in order to get the business you had to promise some reduction from your established rate, didn't you? A. I made no promises.

Q. Did the rates that you finally quoted to Guinle & Com- 2986
pany, were those rates the same as appeared in your printed tariff? A. No, sir, I stated distinctly they are not.

Q. They are less, aren't they? A. They are less, yes.

Q. And you stated that in no way did you intimate to them or suggest to them that you would only give a concession from the rates by their agreeing to ship all of their merchandise over your line? A. I have made no such concession.

Q. I show you Exhibit 216, is that on the letter head of Gerhard & Company? A. Yes, I recollect the contract very 2987
well.

Q. You remember it, don't you? A. Yes.

Q. It says here "this agreement to cover the transportation of your entire shipments of lawful merchandise from New York to ports in Brazil named below on the following terms"? A. Yes.

Q. And yet in spite of that you want it to be understood that in no way did you exact from them that they should ship all of their shipments over your line? A. Nothing but what the letter tells.

Q. The letter tells that pretty plainly, doesn't it? A. I 2988
explained how it happened to be stated there. I stated that in my testimony here in reply to Mr. Kirlin's question.

Q. Did you draw this Exhibit 216? A. I don't recollect whether I did or not; it is some years ago; I saw it anyhow if I didn't draw it myself.

Q. These agreements when they were made insomuch as they guaranteed concessions on the tariff list were done with more or less care by your people? A. Yes, with greatest care.

Q. And the purpose was to represent the intent of the parties? A. Yes.

2989 Q. And when you used the words "this agreement to cover the transportation of your entire shipments of lawful merchandise" they were put in there for the purposes expressed there? A. For those purposes expressed there, yes.

Q. Do you mean to say that if Guinle & Company had not signed the agreement in just that form that you would have given them the benefit of the lower rate? A. I don't understand that.

Q. Do you mean to say if Guinle & Company had not
2290 agreed to consent to send their entire shipments of lawful merchandise over your line and retained or asserted the right to send part of their merchandise over some competing line that you would still give them that rate? A. I don't say so. I do not give any rates at all; our principals give the rates; we get authority from Europe and Guinle & Company wanted us to take care of their shipments, all of them; they wanted to make sure that when the goods arrived here there was a ship ready to take them; they wanted to relieve themselves of the responsibility of taking
2991 care of them.

Q. Confine yourself to my question. Was this agreement reported to the conference here? A. Yes.

Q. And discussed? A. Yes.

Q. And the form also discussed? A. I don't think the form was discussed.

Q. Wouldn't you in a number of these minutes of the conference with reference to these contracts in some instances actually put upon the minutes the form of the contracts? A. Yes, sometimes they will go on the reports of
2992 the conference; all the contracts are reported to the conference.

Q. Then the injection of the words "Your entire shipments of lawful merchandise" was suggested from abroad —by your principals abroad? A. I did not say so. The Guinle Company wanted the contract for their entire shipments and we were quite ready to accommodate them and take care of their shipments.

Q. And you now want to be understood as saying that when this provision in Exhibit 216 to the effect "This agreement to cover the transportation of your entire shipments of lawful merchandise from New York to the ports in Brazil named below on the following terms" was by the

suggestion of Guinle & Company and not of the conference 2993
or any of the conference agents who were party to it? A. As I stated already, I approached them for the contract, so it is my suggestion that I offered to transport their shipments.

Q. You don't quite understand my question, Mr. Gerhard; did Guinle & Company come to you and suggest that there should be put in the written agreement a provision that all their shipments of lawful merchandise from New York to Brazil—— A. They did not come to me, I went to them. 2994

Q. However, then that clause as it appears in the agreement is your act? A. Yes, but that I didn't say to have their entire shipments provided——

Q. I ask you again if they had come to you and offered you a part of their shipments and asserted the right to send the balance of their shipments, or any part of the balance of their shipments, over a competing line, would you have granted them those rates? A. I don't know, sir.

MR. KIRLIN: Objected to as immaterial and irrelevant and calling for speculation. 2995

A. It would not be for me to decide the matter, as I am their agent and acting under instructions from Europe, and I would have simply submitted offers to Europe for the principals to decide.

Q. Did you ever know of a case where acting under instructions from the London conference that your company granted concessions from the printed tariff to a person who would not agree? A. Yes.

Q. Name them? A. We had a contract with the Standard Oil Company for a quantity of kerosene and had to 2996
cut the rate and take it at less than the tariff rate. That is in the recent contracts.

Q. How recent? A. It is a contract still running.

Q. A contract you made since this suit was brought, isn't it? A. I don't recollect the date when that contract was closed.

Q. Name another? A. It is hard to recollect off hand. The Steel Company. It is impossible for me to recollect all of those transactions.

Q. I am not asking you all; I am asking you for any? A. Well, even that, we are constantly——

2997 Q. Now, you say that the Standard Oil Company was an exception? A. No, I didn't say so.

Q. Didn't you say that the Standard Oil Company was one company where you had quoted a rate less than the tariff rate in which you did not exact that they should send all of their shipments over your line? A. Will you kindly read the question put to me when I spoke of the Standard Oil.

Q. I am putting a question now? A. I would like to hear that question first.

2998 Q. I am asking you a question, Mr. Gerhard; if you want to qualify it you can? A. Read the question. I don't wish to qualify it. Let us hear that question.

MR. BALDWIN: I think that I am entitled to put the question.

THE COMMISSIONER: The witness is entitled to have the preceding question read to him.

MR. BALDWIN: He is afterwards, but I have a right to have my question put.

THE COMMISSIONER: I think the witness is entitled
2999 to have the previous question read.

THE WITNESS: I would like to have this question read.

THE COMMISSIONER: This question you answered?

THE WITNESS: I haven't answered the last question.

MR. BALDWIN: I object to being obstructed in putting my questions. I have a legal right to put the question and if he doesn't recollect whether he answered it in that way he can say so and if he wants
3000 to qualify it afterwards he has his chance upon recross and I cannot say I know of any rule where you can cut me off.

(Stenographer read the preceding question as follows: "Didn't you say that the Standard Oil Company was one company where you had quoted a rate less than the tariff rate in which you did not exact that they should send all of their shipments over your line.")

A. Yes.

Q. Now, what were the shipments of the Standard Oil

Company that you granted a concession for? A. I don't 3001
recollect the quantity.

Q. I mean what was the commodity, oil? A. Kerosene and I think gasoline also.

Q. Did you have any published rate on oil, I mean tariff rates on oil? A. We have tariff rates.

Q. Fixed by the London conference? A. Yes.

Q. What were they? A. I don't recollect the rates.

Q. Now, can you give the name of any other shipper? A. The Steel Company.

Q. The Steel Corporation? A. Yes. 3002

Q. When was that? A. We are constantly making contracts with them.

Q. And you don't have any provision in the contracts that they shall send all of their shipments over your line? A. No, sir, no provision of that kind.

Q. Are your contracts with the steel corporation in writing? A. I think we generally exchanged letters when we made contracts with them or bookings with them.

Q. You do not resort to having a formal contract in the form of the Singer Company contract and the Guinle Company contract and the Barbour Asphalt Paving Company? 3003
A. No, the Steel Company do not care—they prefer to make contracts for specific quantities from time to time as they have to ship.

Q. But in their particular business you do not resort to specific written contracts? A. We always make contracts; they are all made in writing; all confirmed by letter; no formal contract except by letter, confirmatory letter.

Q. But you do not adopt the same form of contracts that are already in evidence here? A. No.

3004

Q. Now, I show you Exhibit 213 which purports to be a copy of this tariff of rates; Exhibit 213 is a book entitled "Brazil Tariff" and has "Paul F. Gerhard" on the fly leaf, and he has already stated that this was one he produced here. Now, I show you on page 49 of Exhibit 213, opposite "oil," kerosene in cases, containing three five gallon cans and measuring 3 6/12 cubic feet, per case," with a line in ink marked over each one of the figures opposite, and also on "oil, kerosene (ten gallons drums) per cubic foot, also it says the word "special." Now, as a matter of fact, Mr. Gerhard, weren't the rates on kerosene and gasoline entirely done away with, I mean fixed rates, and that kind

3005 of commodity left entirely to special arrangement? A. The rates on kerosene fluctuate; they go up and down more readily than on most articles, and it is one of the articles that was named in the agreement which was left to the agents.

Q. Then there was no specific—— A. But that authority was withdrawn from us, as I stated, some two or two and a half years ago, because the rates constantly fluctuated on kerosene.

Q. Now, then, if you can confine your answer to my ques-
3006 tion. The Exhibits which you hold in your hand purport to show that there were no tariff rates for kerosene and gasoline, that the figures on the page—the printed page—beside them appear to be scratched out and the word "special" written over them, is that right? A. Yes, and they appear on this page. They are special rates because they were on account of the constant fluctuation and we put them on a separate page.

Q. The page I showed you was 49, and the page you refer to is page 51? A. Yes, that is where the rates are.

3007 Q. You meant page 51 by the next page? A. Yes.

Q. Now, I find "Oil, kerosene, in cases" on page 51, and the figures for the rates to Pernambuco and Bahia, Rio de Janeiro and Santos are scratched out, a line drawn through them; that is right, isn't it? The printed rate is scratched out? A. Yes, the printed rate is scratched out.

Q. Now this Exhibit 213 was printed about when, do you remember? A. You mean the book?

Q. Yes? A. The title will tell you exactly when it was printed.

3008 Q. It says here 1904? A. Yes.

Q. That was in use with certain amendments up until January 1st, 1910, wasn't it? A. I presume, but I cannot recollect how long it was in use.

Q. I find on the title page in writing "Revised January 1st, 1910"? A. I suppose that is correct.

Q. Then I am about right about that? A. I don't recollect; you have the book.

Q. Now, on December 27, 1909, I find an entry or memorandum, rather, in ink, "January, February, March, F. F. A.," and under the column "Pernambucco," "13 cents" and "Bahia 15 cents" and "Rio de Janeiro 14 cents" and

"Santos 15 cents"; you see those there, don't you? A. 3009
Yes, I see them.

Q. Now, there are other memoranda following on the same page in writing; for instance, "January 7th, 1910," and then "February 15th, 1910." Now, will you look and state whether or not all of those figures, or rather all of that memoranda, referred to "oil, kerosene in cases"? A. Yes, they all refer to kerosene.

Q. I want you to get in your mind that I have no desire to perplex you about this, but isn't it a fact that prior to about a year or a year and a half ago there were no fixed 3010
or established rates for kerosene or gasolene in cases or otherwise? A. I have already stated that those rates constantly fluctuate, and the dates, it gives you exactly; it is my own handwriting on that page; it tells exactly the time that we changed. We changed on December 27th when we made these rates; on January 7th we made this rate, and on February 15th we made other rates again. It tells here exactly the dates. This down here is my own handwriting. The dates that we agreed upon those rates, as the rates are constantly fluctuating.

3011

Q. But I understand the fact to be that until very recently there was no attempt to have a printed tariff where the rate was fixed by the local conference, but that the kerosene and the gasoline business was specialized and left entirely to the conference agents here; now, is that right? A. As I have already stated when we first joined the conference we were at liberty to make rates on this side without consulting on special articles, which were called staple articles.

Q. And oil is one of them? A. Yes.

3012

Q. And kerosene another? A. Yes; but at that time we did have authority to fix those rates.

Q. Now, when you say you made a concession to the Standard Oil Company from a fixed tariff rate, you want to modify that, don't you, that it was not made from any fixed tariff rate that was fixed or determined by the London conference? A. Yes, those rates are all fixed and determined by the London conference and we had——

Q. I don't quite understand you. You said a moment ago you had a discretion? A. No; I said that discretion was taken away from us two and a half years ago.

Q. I am speaking of before two and a half years ago?

3013 A. I don't recollect all those details. As I stated with the conference from the first that we had discretion on those staple articles, but that discretion was withdrawn from us at the time when the general freight market went up so rapidly, and that was about two or two and a half years ago.

Q. Prior to two and a half years ago then there was no fixed printed tariff rate on those commodities, was there? A. No, I don't think there was.

Q. And since that time you say there has been? A.
3014 Printed tariffs, no; fixed rates, because, as I said, the market on kerosene varies because kerosene fluctuates.

Q. Where were the rates within the last two and a half years on kerosene and gasoline determined? A. In London.

Q. And has the fluctuation been as great within that period as it was before? A. I don't recollect; I don't think they have been very great.

Q. I show you Exhibit 3, which the evidence shows here was the printed tariff, but not bound, as of the date of March, 1912, and on page 41 opposite the words "oil, kero-
3015 sene and crude petroleum in cases"; there is no printed rate, but the word "special"? A. Yes.

Q. So that even since that time—— A. In 1909?

Q. 1912 is the date of it. Now, since that time there has been no printed tariff for kerosene and gasoline, has there? A. Yes; no printed tariff, but fixed rates.

Q. Fixed in the sense that the agents here would receive a word— A. Yes, by cable.

Q. Would you get that cable rate before your enquiry what the rate would be; how would you do that? Would
3016 they send you word in advance by cable that a certain rate would be charged or after you had gone to the Standard Oil or some other shipper and negotiated with them for their shipments, and you would then cable? A. They send us instructions what rates to charge without our asking very often; simply say put up the rates.

Q. That is, that they would arbitrarily notify you to change a certain rate? A. Change a certain rate, yes. When the Standard Oil Company desired to make a shipment, a large shipment, we then submitted that proposition to London and asked permission to make a booking or make a contract with them.

Q. But if you then had by wire a rate which they had

given you, why would you then ask? A. Because the rate 3017
was too high and the Standard Oil would not pay the rate, and it was a question of a very large quantity of oil which we wanted and we cabled that we could probably secure it at such a figure.

Q. They were very large shippers I suppose? A. Yes, very large shippers.

Q. Has the Standard Oil Company been shipping for any period on other conference lines? A. Oh, yes, they have been regular shippers for years.

Q. They have also been charterers, haven't they? A. 3018
They have been charterers also.

Q. Very large charterers? A. Yes.

Q. And the amount of their business in addition to what they themselves charter for and ship is very large? A. Very large.

Q. So that they are considered by the conference agents here and abroad, your principals, as very desirable customers? A. Yes.

Q. Now, what other shipper can you now refer to where there was a printed tariff that you made concessions from 3019
the tariff rate without having a specific agreement that they should confine all of their shipments for the period of time quoted over the conference lines? A. I have already named the Steel Company.

Q. How long have the Steel Company been at that? A. The company have been shipping to Brazil for a number of years past; I don't remember exactly how long.

Q. Are they also charterers? A. No, I don't think so. No, they don't charter. They may have chartered; I think they have chartered a few steamers for full cargoes of 3020
rails, but as a rule they don't charter.

Q. Isn't it the general understanding in the trade that the Steel Corporation if they cannot get a rate favorable to them always do charter and will charter? A. What?

Q. If they cannot get a rate favorable to them they will and do charter? A. I don't think so.

Q. Isn't it well known that where the conference or other lines have not quoted rates satisfactory to them that they have gone out and chartered? A. Not to my recollection. As I said before, they have chartered for full cargoes of rails. I don't think they have chartered otherwise as far as I recollect.

3021 Q. What class of their products do they ship to South American ports? A. Oh, quantities of wire, barb wire, smooth wire, structural materials; all different kinds; plates.

Q. Have you any idea how many boats they charter a year? A. No, I do not. I have not kept track of it.

Q. In the case of the Steel corporation how did you have your arrangements with them, in writing, specific agreements? A. Yes, specific agreements in writing.

Q. Specific? A. Yes.

3022 Q. Always adopt that form? A. Yes.

Q. And in this agreement you don't have any provision that they shall ship all of their entire merchandise over your line? A. No.

Q. Now, name another one? A. I don't recollect others at the moment.

Q. Now, isn't it true that both the Standard Oil Company and the Steel corporation make their arrangements for a specific amount to be shipped by the various lines; isn t that the way they do their business with you? A. I

3023 think so, yes.

Q. Now, the concessions that you have made to the Standard Oil Company have only been made upon their agreeing to make a contract by the year? A. No, sir.

Q. No such condition imposed? A. No, sir.

Q. Was there a time when you refused to make contracts with them and give a concession unless they did? A. Not to my recollection.

Q. Mr. Gerhard, I show you a copy of a translated cable, translated from a cipher, I take it, under date of October 16th, 1911, on page 44 of the copy of cables—pages 44, 46,

3024 47 and 49 of the New York conference, copy of cable to London, and ask you to look at it and see whether you remember that cable with reference to the Standard Oil Company? A. I don't recollect it.

Q. You do not recollect it at all? A. No.

Q. You recognized it as a cable sent out by the New York conference? A. Yes.

Q. With reference to the Standard Oil Company's offers? A. Yes. I see it was offered but I do not recollect anything about it.

Recess taken until two o'clock P. M.

AFTERNOON SESSION. 3025

PAUL F. GERHARD, recalled.

RE-DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Gerhard, this book contains these copies of cables to the London conference and returns—— A. Yes.

Q. That was the book that was kept up in the conference wasn't it? A. Yes.

Q. And when they received a cable they received it in cipher? A. Received it in cipher.

Q. Answered in cipher? A. Answered in cipher. 3026

Q. And then the translation with the cipher was written down in this book? A. Yes, so it appears.

Q. On page 44 and page 46 is the copy of the cable that was sent to the London conference by the conference here? A. So I believe, yes.

Q. At pages 47 and 49 down to the words "Edward Lloyd" is a copy of the cable that you received in answer there to, isn't it? A. I presume it is.

MR. BALDWIN: I will read that into the record.

"Copy of cable to London, October 16, 1911. Bra- 3027
confer——"

Q. Is that the cable address of the London conference? A. Yes.

MR. BALDWIN: (Continuing.) "Standard Oil Company offers us firm 100,000 cases oil 10,000 cases 1,000 drums gasoline Rio 100,000 cases of oil 6,000 cases gasoline Santos 60,000 cases oil 1,000 gasoline each Bahia, Pernambuco shipments half each lot, second half December loading and first half January 3028
loading 21c prepaid one and a quarter cent brokerage 5,000 cases load daily Sundays and holidays excepted weeks' notice readiness referring to our telegram 13 please reply."

MR. BALDWIN: Answer, copy of cablegram from London October 13th, 1911 to the New York conference.

"Standard Oil Company. Would rather not handle present shipment at 22½——"

Q. "Standard Oil Company," that is the title? A. Yes.

3029 Q. The first words after the address is "Standard Oil," that means the title, doesn't it? A. Yes.

Q. Standard Oil Company? A. Yes.

MR. BALDWIN: (Continuing.) "Would rather not handle present shipments 22½c unless they are prepared make yearly contracts with us regular shipments first steamers quantity and mutual convenience loading and discharging as fast as can receive deliver."

3030 Q. Then I find the words "Steel Company"; is that another title? A. Yes, that is Steel Co. That represents the United States Steel Corporation.

MR. BALDWIN: (Reading.) "We do not understand actual position, are we and they under mutual obligation or do they consider themselves liberty ship Lloyd or other outsiders below tariff rate extra tonnage depends on your reply to foregoing as we see no object shouldering other people's losses and without ultimate gain."

3031

Q. It appears that they declined the offer of 21 cents? A. Yes.

Q. And they did not want it even at 22½ cents? A. So it appears, I believe.

Q. Unless it says—you seem to indicate they would not even take it at 22½ cents unless the Standard Oil Company were prepared to make a yearly contract? A. Yes.

Q. What happened to that? Did you make a yearly contract? A. I don't recollect. I have no recollection at all of

3032 the incident

Q. Is it a fact, Mr. Gerhard, that the Standard Oil Company was so large, its resources were so great, that it was well understood that unless they could get the rates that were satisfactory to them they would charter outside boats and for that reason you frequently did and always attempted to make rates satisfactory to them, is that right? A. Yes.

Q. And the same is true of the Steel Corporation, isn't it? A. Yes.

Q. So that whether or not the Steel Corporation or the Standard Oil Company actually did charter would depend

entirely on whether you met their rates? A. Yes, I sup- 3033
pose that it is.

Q. Now, what other corporation or shipper rather can you now refer to where you made any concessions less than the tariff, the printed tariff rates, where they did not make contracts in the form of the contracts already in evidence containing provision for all their shipments? A. I cannot recollect any other concern at present.

Q. Mr. Gerhard, isn't it a fact that the Standard Oil Company and the Steel Corporation are the only exceptions that you did make? A. I do not recollect others at 3034
present.

Q. Isn't that your general recollection now, the only two you did make exceptions with? A. I stated so; that is all I recollect.

Q. Mr. Gerhard, wasn't the Asphalt Paving Company contract less than the printed tariff? A. I think the first contract, yes, was less; but I don't think the last one was.

Q. The one of April 4th, 1908, was, wasn't it? A. I don't think it was less. Oh, what date?

Q. 1908, and continuing during 1908? A. I think that was 3035
at a lower rate, yes; I think it was.

Q. Wasn't the contract with the Baldwin Locomotive Works less than the printed tariff rate? A. I think so, yes. In fact, I don't think we have a regular tariff on locomotives printed. In fact I have no doubt it was less than the tariff rate.

Q. How about the National Cash Register Company? A. I don't recollect that at all. I did not make those contracts and I have no recollection of it.

Q. The General Electric Company contract which you 3036
identified here, that was below the tariff rate, wasn't it—the General Electric Company contract of August 4th, 1908, was below the tariff rate, wasn't it? A. I couldn't tell you. I haven't got it in my mind.

Q. What about the Roebling & Sons contract of August 4th, 1908; wasn't that below the tariff? A. I haven't the slightest recollection that we even had a contract with them.

Q. The Union Carbide Company contract of August 12th, 1908, that was below the tariff rate too, wasn't it? A. I couldn't tell you; I don't know.

Q. Do you remember the rates quoted to Allerton D. Hitch & Company in August, 1908? A. I do not, sir.

3037 Q. Burnham, Williams & Company; do you remember that? A. Those are the Baldwin Locomotive Works.

Q. They were not always under the same name, were they; sometimes the Baldwin Locomotive Works and sometimes Burnham, Williams & Company? A. At that time it was Burnham, Williams & Company and now it is a corporation called the Baldwin Locomotive Works.

Q. All of those contracts that were made with either Burnham, Williams & Company or the Baldwin Locomotive Works were always below the printed tariff rates,
3038 weren't they? A. I couldn't say, because I have no knowledge of that; no recollection of them.

Q. Do you remember the contract with W. P. Plummer & Company in 1908? A. I guess we had a contract, but I don't recollect the date.

Q. Do you recollect the contract with Thompson & Company? A. I don't recollect it.

Q. These Singer Manufacturing Company contracts, do you remember those? A. Yes, we have had contracts for a long time with them.

3039 Q. Do you remember whether they were below the printed tariff? A. It is my impression they were below the printed tariff.

Q. And the American-India Line? A. I don't recollect whether that was under the tariff rate or not.

Q. How about the Parsons Trading Company, with whom there seem to have been a number of contracts? A. I think those were tariff rates.

Q. Were at the tariff rate? A. I think so, yes.

Q. How do you happen to recall that tariff rate and not
3040 remember about the others? A. Because that was one of my own contracts, and the others were not; I am under the impression it was under the tariff rate.

Q. Now, you remember the Plummer contract generally, don't you? A. Yes.

Q. A tramway contract, wasn't it? A. Yes, a tramway contract, as we called it.

Q. Do you remember by whom that contract was made, by whom it was signed up? A. I think it was signed by Busk & Jevons.

Q. Isn't it a fact that Funch, Edye & Company entered a protest at once at one of the conference meetings here because it was the rule of the conference that these shippers

should not be allowed to ship on any outside line and it had been violated, you remember that, don't you? A. No, sir, that was not the case. I recollect the incident that Funch, Edye & Company entered the protest for the reason that they had commenced negotiations with the Tramway Company and it was the rule of the conference that the broker that commenced negotiations with a concern should not be interferred with by the other agents. 3041

Q. Let me read you from paragraph 125, the minutes of October 21, 1908: "Furthermore it was most clearly stated by B. & J. that the contract was closed with the understanding that Mr. Plummer's shipments by the Lloyd Brazileiro cease absolutely on February 1st, but the contract copies contain a clause giving him a limited privilege of making the shipments by the Lloyds after this date, and as this is contrary to their principal's wishes, we, Funch, Edye & Company, only accept the inclusion of this clause under protest"? A. I forgot all about that contract. 3042

Q. Then, as a matter of fact, doesn't that refresh your recollection that Funch, Edye & Company did protest that they should be allowed to ship any part of their merchandise by the Lloyd Brazileiro? A. Well, if it is there of course it was 3043

Q. You recall it now, don't you? A. No, I do not recall it at all; simply because you say it is written there I accept it.

Q. Will you look at it and see whether it is written there? A. I don't doubt it, but I cannot recollect it.

Q. It further says: "With the further understanding that any shipments so tendered by Mr. Plummer after February 1st, 1909, shall be submitted by Messrs. Busk & Jevons to the other members for their approval"? A. I have forgotten that entirely. 3044

Q. I call your attention on page 62 of the same date, a continuation—October 21, 1908—a continuation of a paragraph—— A. You say October, 1908?

Q. October 21, 1908? A. I wasn't there; I was in South America. That is why I don't know about it.

Q. Look at paragraph number 125 on page 62 and state whose handwriting it is in? A. I do not recognize the writing. You see that was written while I was in South America and I cannot recognize it.

3045 Q. Mr. Gerhard, don't you recollect, or was your attention afterwards called, to the fact that your own company protested against Mr. Plummer being allowed to make limited shipments by the Lloyd Brazileiro? A. I don't recollect hearing about that at all. I did not return until December.

Q. You recalled here a moment ago that part of the incident, the way the contract was signed up? A. It was at that time the negotiations about that or a later contract, I don't know, but I do recollect distinctly that on one occa-
3046 sion while Funch, Edye & Company were trying to negotiate the contract and had entered upon the negotiations, Mr. Daniels interfered and took up the negotiations and finished them and then Funch, Edye & Company protested. Whether this contract or another occasion I don't recollect. At that time I wasn't here at all. At the time that contract was closed, so it must have been on another occasion

MR. BALDWIN: I offer in evidence so much of the conference minutes, paragraph 125, appearing on
3047 page 62, the same date, which reads as follows, under the title "Tramway Contract, Paul F. Gerhard & Company accept for account of Prince Line, except contract it made by Messrs. Busk & Jevons who were authorized to negotiate same for account of the three lines, but hereby protest against that contract being signed by them only as Paul F. Gerhard & Company informed them it was their desire that the contract should be signed by each of the three lines. Protest is also made against the clause giving shippers privilege of making limited
3048 shipments per Lloyd Brazileiro after February 1st, as Messrs. Busk & Jevons gave Paul F. Gerhard & Company to understand shipments would be confined to the three lines after this date."

Q. Now, Mr. Gerhard, who attended the conference in that discussion? A. My son and a gentleman named connor, Harry Connor.

Q. You have no doubt that was a protest made by your firm in your absence? A. I have no doubt it was a protest of my firm. I have no knowledge of it.

Q. Isn't it a fact, Mr. Gerhard, that all of your contracts, 3049
what you call your time contracts, contained a clause or provision that all the shipments should go over these respective lines, isn't that right? A. No, sir.

Q. With the exceptions we will say of the Standard Oil Company and the Steel Corporation? A. There may be other exceptions that I don't recollect at the moment.

Q. The Standard Oil Company and Steel Corporation contracts are quantity contracts, aren't they? A. Yes, they are quantity contracts.

Q. I am asking you with reference to time contracts par- 3050
ticularly? A. The time contracts are made for all shipments.

Q. You mean for all shipments of a particular shipper? A. Of a particular shipper, and for the very reason as I explained——

Q. I have not asked for the reason? A. That is the same point again I made last time.

Q. You will have plenty of opportunity to qualify when —do I understand you now to say there were any time contracts made with any shipper in which there was not a 3051
provision to the effect that all shipments should go over these lines during the period of that contract? A. I think we have made contracts specifying the quantity during the time without any such provision, yes. We have made contracts that way,

Q. I am not speaking about quantity contracts, I am speaking about time contracts? A. Time contracts, we had to do either one thing or another, either allowing shipments or specify the quantity.

Q. I am saying when you did have the time contracts that provision was in there? A. Well, all their shipments, 3052
yes.

Q. Now, isn't it true then that your firm protested against any other member of the conference making any contracts by which shippers, even for a limited period, should be allowed to ship over any of the other lines not in the conference? A. I don't recollect a single instance, and I would not have known this if you had not shown it to me.

Q. Have you any recollection about the Thomsen Oil Company contracts? A. No, sir.

Q. At page 90, under that date, December 22, 1908, appears to be a copy of cable as follows: "Thomsen offers

3053 5,000 petroleum cases to 10,000 monthly, six months. Pernambuco 14c for reply to-day if you want to do business. May already secured send us immediate reply. Think better impossible."

And the answer appears to be as follows, addressed to Braconfer, also, New York——

Q. The New York conference address? A. Yes.

"Thomsen oil Pernambuco agree provided no shipments Lloyd."

3054 Q. Do you remember that? A. I do not; I was not in New York at that date. I was in Virginia.

Q. Doesn't that refresh your recollection so that you can state that the policy of the conference with reference to all these contracts was that they should not be allowed to ship over the Lloyd Brazileiro or other competing lines? A. The policy was to secure all the trade we possibly could.

Q. I am asking you a question in the form that I do—if you cannot answer it you can say so. (Question read.) A. The policy is——

3055 Q. No, answer yes or no. If you don't know you can say so. A. I say no. I will change that, there is no use arguing; it is the policy, yes, you can see it yourself. The policy is to secure all the freight we can; that is our policy.

MR. BALDWIN: I offer copy of a cable to the London conference under date of October 28th, 1908 and the reply.

"May we shade 20c to secure Singer Manufacturing Company contract 1909."

And the answer: "Singer Manufacturing Com-
3056 pany we approve the suggestion."

Also copy of cable to London January 15th, 1909, page 96 of the cable book for that period reads as follows: "Braconfer London what rates may we quote newspaper yearly contract Rio de Janeiro Santos."

By Mr. Montgomery:

Q. What does newspaper mean there? A. News printing paper.

MR. MONTGOMERY: On the next page copy of cable

from London January 19th, 1909: "Braconfer, New 3057
York, newspaper $5.00."

At page 98 copy of cable to London dated January 19th: "Braconfer London newspaper do you mean $5.00 per ton of 40 cubic feet landed?"

And the reply on the next page, 99, from London dated January 20th, 1909: "Braconfer, New York newspaper, yes."

Page 136, dated May 5th, 1909: "Braconfer, London firm offer twelve months contract American Seating Company about 150 tons month Pernam- 3058
buco Rio de Janeiro Santos 12c per cubic foot Bahia 14c per foot both landed subject brokerage 2½%. Reported Guinle made twelve months contract Lloyd all shipments understand Tocantines held up."

At page 141 cable from London dated May 12th, 1909: "Braconfer. New York, American Seating Company will accept 17½c Pernambuco 20c Bahia Rio Santos."

3059
Q. American Seating Company is the title, isn't it? A. Yes.

Q. Do you know what the rate was at that time? A. No, sir.

Q. Do you know what the rate on newspaper was at that time? A. No, sir, I do not.

Q. It was customary to ask what rate you could quote and not whether you could quote the tariff rate, wasn't it? A. We would ask them. The cable states just how we put it.

Q. I have only read a few cables; right through the book 3060
that sort of cables are going back and forth? A. It names the rates which we think after conferring with the parties that wish to contract are inclined to pay; those are the figures.

By Mr. Baldwin:

Q. Mr. Gerhard, how is the expense of the conference borne here? A. The expense is borne equally by the three interests.

Q. Do you have a regular room that you rent here? A. Yes, sir.

3061 Q. And you maintain a secretary? A. Yes.

Q. At a salary? A. Yes.

Q. How much does it amount to? A. The secretary makes up a statement——

Q. A regular salary? A. Regular salary.

Q. How much is it? A. $125 a month.

Q. What other expense do you have? A. Nothing but the salary, the rent of the office and the cables; I think that is about all; incidental expenses of stationery and anything of that kind.

3062 Q. About how much does the expense amount to a year? A. I am hardly prepared to answer that.

Q. Several thousand dollars, doesn't it? A. I don't think so. Several thousand dollars, yes, I think about several thousand dolars, that is right.

Q. I have here before me, Mr. Gerhard, Exhibit 7 which would indicate for the year 1910 the expenses amounting to $3,649? A. I was just going to figure it out. We generally give a check for $100 every month.

Q. You say it is divided between three, you mean the
3063 agents or the principals? A. The principals pay; each agent pays its share.

Q. You don't pay it out of your commission, do you? A. No, we charge it to them.

Q. Your commission then is in no way diminished by this expense? A. No.

Q. You say no part of the pooling arrangement as it existed before its abandonment was carried on here, is that right? A. Yes.

Q. Where were the divisions of the pooling made? A. In London.

3064 Q. And no payments were made here or apportionments made here at all? A. Apportionments, of course. The secretary made up statements and so made up the apportionments; that was done here.

Q. At the time you had the pooling arrangement there was a pooling of the agents commissions' too, wasn't there? A. Yes.

Q. Wasn't that divided up? A. I would like to get a check from Mr. Daniels now; he owes it to me now; he never paid it.

Q. That occasions no surprise to the Government what-

soever? A. He never paid it, so there was no commission 3065
paid to me I assure you.

Q. Leaving aside the question of responsibility of Mr. Daniels or of his good intentions, did you ever divide the pooling commissions here? A. Why, no. The commission was only for one year and the pooling commissions showed that Busk & Jevons were owing us, Gerhard and also unch, Edye & Company, considerable money. I can only speak for my part; whether Funch, Edye got anything I don't know, but I know I never got a cent and I would like to have it now. 3066

Q. I have here before me Exhibit 5 which purports to be a statement of the commissions for the year from July, 1908 to June 30th, 1909? A. Yes.

Q. Giving the name of the steamer and number and the total amount. Will you look at it, Mr. Gerhard, and state what the totals mean? A. I presume these commissions were the amounts that were charged in the steamers' accounts.

Q. You take under the column B. & D.? A. That is Busk & Daniels. The commissions they had charged and 3067
consequently recovered from their principals, charged in the steamers' accounts.

Q. And under F. E. & Company? A. The commissions they charged in their account.

Q. P. F. G. & Company? A. The commissions we had charged. You see all we had by the total—our commissions were only $7,095.

Q. As against Busk & Daniels' $13,722.19 and Funch, Edye & Company's of $8,323.63? A. Yes.

Q. Now, that is what they charged? A. Yes.

Q. And under the pooling agreement you divided that 3068
and it must have been divided into three parts? A. That was the understanding.

Q. And you did not get your share? A. The next page will indicate how it was divided.

MR. SPOONER: There is no place where it shows it was divided.

THE WITNESS: No, but it was to be divided.

Q. According to the recapitulation the amount that you were entitled to get was $9,713.67 for that year in the way of commissions? A. Yes.

3069 Q. And the amount you received was $7,095.30? A. Yes.

Q. So then either Busk & Jevons or Funch, Edye & Company, or both, are indebted to you in part for your balance of $2,618.47? A. Yes.

Q. I judge from looking over this neither Funch, Edye & Company or Gerhard & Company got their full quota? A. It looks very much like it, yes.

Q. When you were operating the pool you expected you were going to get it, didn't you? A. We had nothing to do with making that contract——

3070 Q. That is not responsive. You expected, of course, you would get your proportionate amount? A. Yes.

Q. And, therefore, in making the various contracts you were not at all particular which one did it, relying to get your division of commissions at the proper time, is that right? A. We were not particular, except so far as that it was to the interest of each agent to make his share of contracts and prove his usefulness in the trade.

Q. I say beyond that? A. No, it made no difference in dollars and cents.

3071 Q. I suppose you made demand for that commission? A. Yes, made peremptory demand.

Q. Can you state about the amount that your firm received for freight from shippers, the various shippers here, during 1908 down to the present time? A. From memory?

Q. Oh, just in round figures? A. No; I have no idea; I never figured it up.

Q. Can you supply that information at a later time? A. We have the accounts, of course; we could make up a statement.

3072 Q. I am not so particular, but just to get the total, the amount you received in freight for the successive years of the conference? A. I think I could get it, yes.

Q. I understand that there are a great many shippers all over the United States that ship by these conference lines and have since the conference started? A. When you say a great many over the United States, I do not consider that there are so many all over the United States. The most of the shippers are really in New York City. We have shippers in other parts of the states, but the majority are in New York City.

Q. How many shippers are there in New York and ter- 3073
ritory contiguous to New York, who ship over these lines? A. We have about 600 names on our cards, so I presume that is about the number of shippers. Roughly stating it, I think about 600.

Q. You have undertaken here to state what the benefit would be to shippers by reason of the conference, and you stated in substance that the trade has been increased? A. Yes.

Q. There has been a gradual increase in trade all over the world, hasn't there? A. I believe so, yes. 3074

Q. And there have been increases in facilities of ships, the size of the ships, the speed and all that, and even the size and the quality of the tramps have increased too, haven't they? A. I think so, yes.

Q. So that you do not intend to convey the impression that the increase in the trade between the United States and Brazil or with Brazil was brought about by the fact of the conference, do you? A. I think so, decidedly.

Q. And there was an increase, was there not, during the time of the rate war, so-called? A. The shipment at the 3075
time of the rate war were very small, very light.

Q. You mean to say that during the time of the rate war that there was not an increase over the period just preceding, when there was another conference? A. I am hardly prepared to answer that question definitely, but I do know that during the rate war the market was very bare of freight; the market was very low, and even the small boats that we had we had great difficulty in filling.

Q. How was it just immediately preceding that? A. It was a small market right along as I explained this morning. 3076

Q. Now, even the volume of all the traffic in the South American ports, east from Europe, was less during those periods, wasn't it? A. I don't know how the European traffic compared.

Q. You don't know about that? A. I had no way of knowing it.

Q. In what particular—if there has been an increase of business all over the world, you claim that the conference has developed it? A. The conference has developed it because they furnish a frequent communication with Brazil which increased the shipments and thereby increased a

3077 more rapid consumption of the goods that went there, and the facilities offered by the steamers also increased emigration to those countries, so that as the population increased, of course, the demand for goods increased. All of that was brought about by steam communication and greatly facilitated by the steamers the conference were able to furnish on the strength of being able to make their bookings and getting up business for the steamers.

Q. And it is your idea that the increase in emigration from Europe to the South American countries was induced
3078 by the fact that there was an increase in the number of steamers? A. It increased the consumption of goods and the larger——

Q. That does not answer my question. My question is do you claim that it was because of the increase in the number of steamers that that increased the emigration from European ports to South American ports? A. Not the increase of the steamers between New York and Brazil of course not.

Q. That is what I meant. Then this conference here in
3079 no wise contributed to an increase in the population in South American countries? A. No, sir, not in population.

Q. But you do admit the increased population increases the demand necessarily? A. Yes.

Q. So it was not the conference that added to that, was it? A. No, not to that.

Q. There had been a steady increased flow of emigration from European ports to South American countries for a number of years before this conference, hadn't there? A. Yes.

3080 Q. And there was an increased demand for all kinds of goods by reason of it, wasn't it, down there? A. Yes.

Q. So that even during the time of the alleged rate war here there was a very strong demand, was there not, for goods here? A. No, sir, at that time it was very light.

Q. Weren't the merchants clamoring for vessels to send their goods out from here? A. Not at that time. It was very slack at that time as I have already stated.

Q. Do you remember testifying before the Investigation Committee of the House of Representatives as follows: "Some years ago, when the lines were all fighting and rates got down to 10 cents or even lower, none of the lines were disposed to dispatch more than one small steamer a

month. The result was that at one season in New York 3081
Harbor there were any number of lighters loaded up with cargo for the River Plate and no steamers to take it. The merchants were asking, 'What is the rate?' 'The rate is 10 cents a foot.' 'Well, give me room for it.' 'I have not got any room. You have got to wait.' See? They were ready to pay almost any price, and that is the reason why they are willing to make their contract ahead and know that they can depend upon facilities to ship." Now then, during the period of the rate war there was an outward demand, wasn't there, for vessels for cargoes that 3082
you would not supply or could not supply, isn't that right? A. My testimony there referred to entirely different trade. It has nothing whatever to do with Brazil.

Q. Wasn't there a rate war in the River Plate trade as well as the Brazilian trade at the same time? A. I don't think so, no, sir. That incident took place many years before.

Q. This was a long time even before that? A. A long time before that, yes. But I do recollect incidents in the Brazil trade in the rate war.

Q. Never mind, wait a minute. Now, during this rate 3083
war there were in the traffic here your line, the Lamport & Holt Line, and what other line? A. The German Lines.

Q. Also the Lloyd Brazileiro? A. Yes.

Q. Any other lines? A. Not that I recollect.

Q. Did the number of sailings of the Lloyd Brazileiro—were they any less during that period than they were immediately before? A. I don't know, sir.

Q. Were the number of sailings of the Lamport & Holt Line less during that period than they were immediately before? A. I don't think so. We dispatched about the 3084
same number of steamers.

Q. And the number of sailings of the German Lines were just the same as they were, or weren't they in the service just before? A. They were in the service.

Q. Weren't their number of sailings the same? A. I am under the impression that it is.

Q. How about your line? A. At that time it was the Lamport & Holt Line. In 1908?

Q. 1907, that was the period of the competition? A. Yes, I was representing both lines.

Q. Were the number of sailings of the Prince Line any

3085 less in that year than they were immediately before? A. My impression is we only despatched one steamer a month for the Lamport & Holt and also of the Prince Line.

Q. One each? A. Yes. That is my impression. No, Lamport & Holt was two, but the Prince Line, I think had only one.

Q. Then so far as you know the number of sailings outward from New York during 1907, this rate war period, was at least equal to what it was during the period before? A. Yes, I think so.

3086 Q. So then, so far as the merchant was concerned he had just as many opportunities to ship his commodity as he had immediately before the rate war, isn't that right? A. Yes.

Q. So that in this competitive period the facilities open to him to get his merchandise if he wanted to send here was quite as great as it was in the years preceding? A. Yes.

Q. So that from the shippers standpoint he was not particularly curtailed or hampered because of the fact that you were in rate competition, was he? A. He was

3087 hampered.

Q. He wasn't hampered in the number of boats which were available to him, was he? A. Yes, but there were other reasons why he was hampered.

Q. I will come to that. The quality of the boats immediately preceding the rate war were quite equal to what they were during the rate war, weren't they? A. Fully.

Q. So that he was not hampered on that, was he? A. No, sir.

Q. Had the facilities for the loading and stowing and

3088 handling of cargo generally been any better immediately preceding the rate war? A. No difference whatever.

Q. So then there was some other reason besides those three? A. Yes.

Q. That made it better for the shipper when there was a non-competitive period? A. Yes, sir.

Q. Since you eliminated those three what remains that benefited him? A. The fluctuations in freight rates frightened merchants from sending orders, for they never knew when they sent an order to-day at a certain figure but what their competitor next day would get something lower and that result was they held off and would not ship.

Q. That is to say, one shipper's view point of the other 3089
shipper was that he might get by reason of no stability of rate a better rate than he? A. Yes.

Q. Suppose he was in competition with the other shipper, how would he be hurt? A. Hurt in the market in selling goods. If his neighbor could put goods on the market at a lower figure he could not sell at a high price.

Q. If the man is not in competition with another shipper he would not be affected by that, would he? A. I fail to see how the merchant can do business and not have competitors, I cannot realize that; there is always competi- 3090
tion.

Q. You have mentioned some shippers here that seemed to be in a class all by themselves; they wouldn't be affected by it? A. Constructors.

Q. They would not be affected by it? A. No.

Q. So you eliminate that class of shippers? A. That class of shippers.

Q. But those who we would say would be in competition in the disposition of their goods in the Brazilian ports they would be hurt because one might get an advantage 3091
over the other? A. That is it.

Q. Those rates did not fluctuate up much, did they, during this competitive period? A. They fluctuated a great deal.

Q. Do you mean to say that the rates were higher during the competitive period than they were immediately preceding? A. The rates were higher before the competitive period and continually declined.

Q. Kept going down? A. Kept going down.

Q. Now, supposing a shipper had a commitment with the consumers in Brazil, or the Brazilian merchant or ship- 3092
per had commitments here at a fixed price, we will say, how would he be hurt if when it comes to paying the freight he pays less freight? A. Because the goods would cost him either less or more. That is where the trouble comes in.

Q. I don't quite understand that. Supposing that a merchant should arrange here to sell and deliver at Rio de Janeiro a certain amount of any one given commodity, and he and the producer agree upon the price—— A. Yes.

Q. Now the seller makes that price upon a present rate or what he assumes he can get? A. Yes.

3093 Q. Now, when it comes to actually delivering the goods to the carrier he finds that the rate is less by reason of the competition, has he been hurt any? A. That is not the way to state it.

Q. That is the way I state it just the same? A. I say he is not affected the way you state it.

Q. I am asking you would he be hurt because, he, the shipper, would have to pay a little less freight or considerably less freight if he gets the same proportion of profit at the other end of the line? A. You are making a propo-
3094 sition which is not in accordance with the custom of the trade.

Q. You mean to say that there are no merchants here that arrange for commitments of merchandise by contract to be laid down there in Brazil? A. Without covering themselves on freight? No, sir, there are mighty few that take a chance on the freight.

Q. Which one do you mean, the seller? A. The shipper here. If you will allow me to explain you can then put your questions afterwards. I want to show how the busi-
3095 ness is down there.

Q. I think I know how it is done, in some way at least. Assuming, Mr. Gerhard, that a merchant had made a contract to deliver to a merchant or a consumer in Brazil a commodity at a fixed price? A. Yes.

Q. And that he took into consideration what he thought he could get the rate at? A. Yes.

Q. When he comes to ship the goods he finds the rate is down? A. Yes.

Q. Now, is he hurt? A. No, no, not at all. He is making a profit then.

3096 Q. If the shipper makes a contract by which the purchaser buys with the cost of insurance and freight to be paid at the end of the line, and when the time of delivery is in the future, but when it comes to deliver the goods the rate has gone down, that is, the freight rate has gone down, then the receiver of the goods pays less freight, doesn't he? A. I don't know.

Q. If the cost of the freight has gone down he pays less, doesn't he? A. I don't know what freight the shipper charges.

Q. Do you understand my question? A. I do, sir, decidedly.

Q. If a merchant here sells to a merchant in Rio a cer- 3097
tain commodity to be delivered in the future and the merchant in Rio is to pay the freight—— A. Yes.

Q. Among other charges, if when the goods are delivered—— A. You mean to ship here?

Q. Yes. I mean shipped here. The rate of freight is less than it was the time the contract was made, he pays less freight, doesn't he? A. Yes, and I answered that before.

Q. And therefore it costs him less? A. Yes, I answered that question a minute ago. 3098

Q. I am speaking about the merchant at the other end? A. I can't see the difference between the two questions.

Q. In that case the merchant there would actually pay less for his goods, wouldn't he? A. Certainly.

Q. So that under that assumed state of facts neither the merchant here or the merchant there would be hurt, would he, if there was competition? A. No, he would not be hurt at all.

Q. Isn't it a fact that during this entire competitive period the freight rate was downward? A. Yes. 3099

Q. And continually downward? A. No, there were fluctuations; if they saw the chance why they got more.

Q. If the amount of cargo was offered so that there was a possibility of all the space being occupied then the rates would go up a little bit? A. Yes.

Q. But only under those circumstances? A. Only under those circumstances.

Q. Now, how many of the 600 that are on your list as merchants or shippers have you consulted as to their advantages under a non-competitive or conference plan? A. 3100
I have not consulted with any of them. I don't see any occasion to consult with them.

Q. Then when you give what you say to be the advantages by reason of conference it is your idea of the advantages, but not what has been communicated to you by these 600 or odd shippers? A. Indicated to Judge Alexander in the replies to the circular letter that he sent out to the merchants.

Q. I am asking you now; I don't know anything about Judge Alexander; I haven't seen the replies? A. I have seen a good many of them.

3101 Q. I suppose you can subpoena them here, can't you? A. No, sir, but I think we can get them probably.

Q. How many of the replies did you write yourself? A. Not one, sir.

Q. I will take that to be true if you say so. Now, how many of the 600 that are on your list that are not living contiguous to New York? A. I could not tell you offhand. As I stated, the majority of our shippers are in New York.

Q. How many shippers are there in New York who patronize your line? A. I don't know, sir.

3102 Q. How many of them are simply agents that gather up freight from all over the country to ship, sort of shipping agents? A. I haven't the figures in my mind at all.

Q. We have had here the name of Rodney Chipp, is that the name? A. Rodney D. Chipp.

Q. What is he, a forwarder? A. No, sir, he represents a company that holds a number of concessions in Brazil for building railroads and other structures.

Q. He does not make it a business to represent shippers here and make commitments for freight? A. No, he does

3103 not represent any shippers. He only ships goods for his own company for construction of railroads and so forth.

Q. You mean he represents two or three companies here? A. The companies he represents.

Q. What companies does he represent? A. One in the Bahia Railway Company, and there are several others I have not got in my mind now.

Q. Then he really is not a concessionaire down there, but he represents people that are? A. He is the representative of those companies. Of course, I presume the com-

3104 panies are the concessionaires.

Q. Well, you would answer the question yes then, that he is not a concessionaire, but it is people he represents who are? A. You asked me a question that I am not prepared to answer. I do not know the details of the business. I don't know whether he went to Brazil and obtained the concessions or other people in the company.

Q. You said in answer to a question of Mr. Kirlin's that the merchants could not make contracts to carry out their concessions if they were not assured of sufficient boats? A. Yes.

Q. There were sufficient boats during this competitive

period, weren't there? A. For the business at that time 3105
offering, yes.

Q. So there was no reason why they could not make their contracts during that period? A. The——

Q. Can't you answer that yes or no? A. What is your question?

Q. (Question read.) If they had sufficient boats? A. Not large contractors; only the small contractors.

Q. And you have testified there were just as many boats and just as many sailings during the competitive period as there was immediately before? A. Yes. 3106

Q. So then the facilities for making the contracts, or to carry out the concessions, would be just as great during a competitive period as it was before? A. I don't think so.

Q. Why not? A. No one line would be disposed to assume these big contracts to carry these large quantities of rails and cars on their own ships alone.

Q. Yes, but there were other lines here all the time? A. No, but the merchants want to make a contract with one party; he wants to be sure that the steamers are ready to 3107
take his goods when they arrive in New York, and he don't care to contract with two, or three, or four different parties.

Q. Also there were plenty of vessels of equal quality there? A. Many of these big shippers would not take a chance on the market.

Q. You refer to the big shippers? A. Well, shippers like Plummer and the Steel Company; they ship large quantities. They come into the market sometimes with 10,000 tons of rails to be shipped in one month. No one line 3108
would dare to assume that contract, but the three lines get together and divide it up and take it.

Q. To come back again to this competitive period, do you mean to say they could not get proper tonnage for their shipments during that period? A. For 10,000 tons of iron?

Q. Yes? A. No, sir, they could not.

Q. Could they get it immediately before? A. I don't think before even. That is the result of the growth of the trade. That enables us to assume these big contracts and build these ships.

Q. You stated in answer to Mr. Kirlin's question that

3109 the merchants could not make these contracts if they were not assured of sufficient boats? A. That is very true.

Q. Now, if during the competitive period there were just as many boats as there were before they were not then hurt by the fact that there was a competitive period, were they, because they could get boats, couldn't they? A. As I told you we despatched boats at that time with half cargo; we could not get enough cargo to load the small boats we had.

Q. There were sufficient boats, weren't there? A. Yes,
3110 plenty.

Q. Then when you said in answer to Mr. Kirlin's question that it was because they could not get boats you want to qualify that? A. In what way, sir?

Q. I don't know. Your answer was distinctly merchants could not make contracts to carry out concessions if there were not sufficient boats assured? A. I did not speak of the competition period at that time. I spoke of the trade in general, not that competition period. At that competitive period business was extremely dull and there were no such contracts in the market. No such concessions had
3111 been granted that have since been granted which have so increased that trade. My remarks applied to the existing condition at that time.

Q. Then so far as the competitive period that did exist before you did not have that situation, is that it? A. We did not have the situation; we did not have those big contracts.

Q. You did not have that situation? A. You have reference to these big contracts? Yes, we did not have such big contracts.

3112 Q. When you state then that the merchants could not make contracts to carry out concessions if they were not assured of sufficient boats you mean then that you infer because that there was conference that they could do it, is that it? A. Yes.

Q. And that if there wasn't conference there would not be sufficient boats, is that the idea? A. There would not be the same opportunity to make those contracts.

Q. What do you mean by opportunity, sufficient boats? A. As I have already stated no one line would care to assume those large contracts.

Q. Then, it is not the question as to the sufficiency of

the boats that would preclude them from making these con- 3113
tracts, but because no one line would be willing to make contracts of that size, is that the idea? A. That is the idea, yes.

Q. Then you do not base that opinion of yours upon any experience prior to the conference, do you? A. No, sir.

Q. The number of merchants who have these concessions are very limited, aren't they? A. Yes.

Q. How many would you say out of the six hundred that are on your list are in that line of business? A. I could not tell off-hand. There are not many that hold conces- 3114
sions.

Q. There are not more than four or five, are there? A. I don't think there are.

Q. Then the advantages for merchants that could not make contracts that you referred to in answer to Mr. Kirlin's question were these few merchants that held these concessions? A. No, sir, not at all.

Q. If there were as many boats and as many lines during the competitive period as there were immediately before then other merchants who are not concessionaires and do not have such large cargoes or shipments, they would not 3115
be affected at all by the fact that no one line would take their cargo, would they? A. They would be affected, for if these large quantities of cargo were not obtainable the lines would not have as many steamers, could not afford to lay on as many steamers on the berth to take cargo and, consequently, all the small merchants would not have the same facilities to send their goods forward and as quickly and as frequently as they have when the lines are able to secure contracts ahead and provide tonnage accordingly.

Q. But you have already testified that during the com- 3116
petitive period there were just as many sailings as there were immediately before? A. I have repeatedly testified that during the competitive period business was abnormally small; it was most dead; there was very little doing. As I said, at that time we had steamers that carried 112,000 cubic feet, another one of 120,000 cubic feet, and we sent them out with half cargo, so we should have been very glad indeed to get more cargo during the competitive period, but it was not in the market and I have explained the reason why we could not get all this.

Q. I want you to explain it again. If there were as many

3117 sailings in 1907 as there were in 1906 and 1905 then there was just as much facility offered to the merchant as there was before, wasn't there? A. If there were; I don't know that there were.

Q. Didn't you testify here two or three times that the number of sailings in the competitive period were as many as there were immediately before? A. As far as I recollect I said—I cannot carry those figures in my mind—as far as I recollect there were about the same number of sailings, but I cannot tell you positively.

3118 Q. Assuming that there were the same number of sailings and assuming that business had fallen off during the competitive period, if there was the same number of sailings what merchants there were in the business had just as good facilities as they had before, didn't they? A. At that time, yes.

Q. Had the class of boats increased during 1907? A. No, sir.

Q. Had the class of boats increased in 1908? A. I don't think so.

Q. Had they increased in 1909? A. I think in 1909 and
3119 after that the boats all increased in size.

Q. Are we to infer from that that all of the boats of these various conference lines were taken off in 1909 and larger boats substituted? A. Not all.

Q. How many in 1909 were taken off and how were those substituted? A. I can speak for my own?

Q. Do so? A. I don't believe we had—well, I think six or eight of the boats, the small boats that were running at that time to Brazil and the River Plate have all been taken off and we have a fleet now—since then I think they built
3120 ten or twelve large boats.

Q. I presume that is true, and I do not question it, but you still do not catch the drift of my question; was there any change in 1909? A. I could not tell you just the exact time of the change.

Q. They were gradually taken off? A. They were gradually taken off, and one or two put on.

Q. One a year? A. Four a year. We got four new boats I think in one year.

Q. Wasn't that very recently? A. I think that was 1909 or 1910 when we got those boats.

Q. There is some evidence here by Mr. Daniels to the

effect that in 1909 there was one or two boats that were taken off and new boats put on; I may mis-recollect his statement as to that, but not until 1910 was there much of a change in any of these boats? A. I suppose Mr. Daniels spoke of the Lamport & Holt Line and I am speaking now particularly of the Prince Line. 3121

Q. Then, speaking for the Prince Line, cannot you give us some definite statement when, whether in 1909, you took off any of your boats and added new ones? A. I know we did, yes.

Q. How many? A. That is difficult to state. We have been getting new boats ever since 1909; I think every year we have been getting new boats. 3122

Q. If you can take that book there and state the number of new boats put on by the Prince Line since 1908 and the year they were put I shall be glad to have you do it and save time? A. The *Asiatic Prince* was built in 1910, the *Burmese Prince*, 1911, *Chinese Prince*, 1911, *Eastern Prince*, 1910, *Indian Prince*, 1910, *Scottish Prince*, 1910. Those are the names here.

Q. Are those the boats, new boats, that have been put on since the conference? A. Yes. 3123

Q. How many of them were engaged in this conference business? A. As a matter of fact we run them all.

Q. How many are running regularly in this conference? A. Of those that I have named?

Q. Yes? A. Four at least.

Q. Just take that again and state which ones are in this conference regularly? A. The *Asiatic Prince*, the *Eastern Prince*, the *Indian Prince*, and the *Scottish Prince*. Those are the four boats that were built for the Brazil trade and now engaged in it. 3124

Q. And the *Burmese Prince* was never in this trade? A. The *Burmese Prince* went up occasionally. You asked those that were engaged in this trade?

Q. Yes? A. I named those four; besides that we have a number of other steamers that proceed to the River Plate and also serve Brazil, and the *Burmese Prince*, the *African Prince* and the *Black Prince*, those are not the newer boats, they have been built previously, but those are all engaged in this trade. In fact, this list gives you all the steamers engaged in the trade. (Referring to Petitioner's Exhibit 212, for identification.)

Q. The *African Prince* is in the Asiatic trade isn't it?

3125 A. The *African Prince* at the moment is in Santos, in the Brazil trade. Arrived there a day or two ago from New York.

Q. Did you have any new boats in 1908? A. I don't think any new boats in 1908; I don't think so.

Q. Can you look at that list and say whether you had any new boats in 1909? A. According to this list the newest boats were in 1910.

Q. That is what I assume, but you seem to think there were some before that? A. It is very hard for me to say

3126 so.

Q. Looking at this Exhibit 212 for identification, I find under your list here in 1910 the only new boats you have mentioned are the *Black Prince*, the *Scottish Prince*—— A. The *Black Prince* is not so new as the *Scottish Prince*.

Q. And the *Asiatic Prince;* there are three boats in 1910 added? A. The *Indian Prince* came out in July, 1910.

Q. But did not go into service according to this schedule until December 9th of that year, so that the *Indian Prince* only had one sailing in 1910? A. Well, that is probably it.

Q. And that is the very last of the year. Now, were

3127 there any new boats added in 1911? A. Will you excuse me a minute?

Q. State again the boats that were added to your fleet in 1910? A. *Asiatic Prince, Eastern Prince, Indian Prince* and *Scottish Prince*.

Q. Were there any new boats added in 1911? A. *Burmese Prince* and *Chinese Prince*.

Q. Then the *Chinese Prince* was added in 1911 into the service? A. I don't recollect. I take it for granted. I haven't it in my mind.

3128 Q. Were there any boats added in 1912? A. Yes; they bought four boats, but I haven't the names in my mind. They were not new boats, they bought them and added them to the fleet.

Q. Were there any boats added for the regular traffic to the Brazil trade in 1912, whether newly built or otherwise? A. The boats they added as the trade required. We do not keep them exclusively for the Brazil trade, but when we find them needed in the River Plate trade we send them to the river; if we find the next voyage they are needed for the Brazil trade we send them to Brazil. If we find we need them for the African trade they are sent to Africa. If the steamer is wanted for the East Indies and one of the

South American steamers happens to fit the trade she is 3129
sent to the East Indies, but they are not kept for any special trade.

Q. What I am trying to find out in view of your testimony that you increased the size of your boats, the tonnage, and the quality, I want to know during 1912 what boats were added to this Brazilian trade that were not there before? A. That list will give it to you. If you will allow me to take the list I will read them off for you.

Q. The ones that were not there before, I shall be very glad to have it? A. How do you expect me from memory 3130
to give you a list of all those steamers?

Q. I don't ask you to; you have the list there? A. Even with that I cannot recollect; there is no date on that.

Q. The dates of sailings are here? A. I don't know whether the steamers went in the previous year or not; it is impossible for me to give such information here. That is all of record there; you have it yourself.

Q. Mr. Gerhard, looking over this schedule of sailings and ships in Exhibit 212 for identification, I only find in 1912 the *Siamese Prince* as a boat which was not in the service in 1911? A. Well, that may be the only boat, but 3131
the fact is we despatched more steamers; we despatched two steamers a month to Brazil in 1912 where we formerly despatched one steamer a month.

Q. That was not my question; I was asking for the number of sailings for each boat; I was asking you in view of your testimony as you had increased the quality and the size of your boats, new boats and all that, when you began to add them and how many you added each year, that is all I ask? A. I have stated what we added in 1910?

Q. Yes, and 1911? A. And 1911. 3132

Q. Now, will you look at that and see if the *Siamese Prince* is not the only boat that you had in 1912? A. The *Ocean Prince* went out in 1912; that is one of our biggest boats. The *African Prince* one of our biggest boats.

Q. See if that is not down there before? A. I don't think so. No, sir, she is not. Yes, we sent her out in November, 1911. As the trade increased we put in those larger boats.

Q. That is not the point? A. My statement is that we have increased the trade and furnished larger boats.

Q. You have already stated that and the whole purpose of my question is to get the exact number of new or added

3133 boats in this trade which were not there in 1908. Now, that is a very simple matter? A. You will find here in 1912.

Q. In 1912 you have a list of the boats that sailed in this conference trade? A. Yes.

Q. In 1911 and 1910 and 1909 and 1908? A. Yes.

Q. Now, you have already shown here that in 1910 you added four new boats and a fifth, the *Black Prince*, not a new boat, but bought into the service, is that right? A. Yes.

3134 Q. Now, in 1912 I ask you what boat was added into this conference business in that year that was not there before? A. I cannot tell you off-hand. You have the list all before you. You can compare it and see what ones in 1911, and check it off and see what is left over and then you will have it. I haven't it in my mind; I cannot answer it.

Hearing adjourned to Friday, May 23rd, 1913, at 10.30 o'clock A. M.

NEW YORK, May 23rd, 1913.

3135

By consent hearing adjourned to Monday, May 26th, 1913, at 10.30 o'clock A. M.

NEW YORK, May 26th, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

3136 Messrs. BURLINGHAM, MONTGOMERY & BEECHER; by Charles Burlingham, Esq., for Frederick T. Busk, *et al.*

Messrs. SPOONER & COTTON; by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

Messrs. CONVERS & KIRLIN; by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

PAUL F. GERHARD recalled.

RE-DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Gerhard, at our hearing of Thursday we were—

I was examining you when we adjourned about the number 3137
of new boats. Now, since 1908, how many new boats have been added to your line; can you now state? A. Here is a statement, sir. (Producing paper.)

MR. BURLINHAM: It is understood my father's right to cross-examine Mr. Gerhard is reserved until such time as Mr. Gerhard comes back?

MR. BALDWIN: Yes.

Q. Is this list you hand me one that you have prepared? A. Yes, sir. 3138

Q. And states the number of boats added? A. Number of boats added.

Q. Since the conference? A. Yes.

Q. And this is entirely for boats by your line? A. Entirely the Prince Line, yes.

Q. And you say these steamers are all employed in the Brazil and River Plate and South African trades? A. All these steamers are employed in the Brazil, River Plate and South African trades as required to supply the various branches. 3139

MR. BALDWIN: I will read the list into the record; it is as follows:

"PRINCE LINE.

BUILT IN 1910.

S/S "SCOTTISH PRINCE"
S/S "INDIAN PRINCE" } Especially for
S/S "EASTERN PRINCE" } the Brazil trade.
S/S "ASIATIC PRINCE"

IN 1911 AND 1912. 314

S/S "SIAMESE PRINCE"
S/S "BURMESE PRINCE"
S/S "JAPANESE PRINCE"
S/S "CHINESE PRINCE"

AND BOUGHT IN 1912.

S/S "AUSTRIAN PRINCE"
S/S "BULGARIAN PRINCE"
S/S "HUNGARIAN PRINCE"

All these steamers are employed in the Brazil River Plate

3141 and South African trades as required to supply the various berths."

Q. You state that they are employed in these three respective trades? A. Yes, sir.

Q. Now, 1910, how continuously was the *Scottish Prince*, the *Indian Prince*, the *Eastern Prince*, and the *Asiatic Prince* employed in the Brazil trade? A. It is impossible for me to recollect the exact dates that they were despatched, but I give you a list here complete with all the ports added to it. The same sheet as you have here on
3142 record.

Q. You mean Exhibit 212 for identification? A. That gives you every port those steamers—the voyages they made. It is more complete than I can give it from memory.

Q. According to the Schedule 212—Exhibit 212 for identification—I will offer this in evidence now since it has been completed.

Received as Petitioner's Exhibit 212.

Q. According to this Schedule 212 I notice that the new
3143 boat, the *Eastern Prince*, only made three voyages to the Brazilian ports, May 25th and August 24th and November 25th, 1910? A. Yes.

Q. Now, where was that boat otherwise employed for that year? A. Only in that trade; only in the Brazil trade. I don't think they went anywhere else.

Q. That only covers three voyages in the whole twelve months? A. That is about all they can make. We have those four boats so arranged that they cover the berth on the 24th or 25th of each month, those four boats. That is what they are intended for, in that trade, and the great
3144 trouble is that these steamers meet with a great deal of detention in the Brazilian ports so that they cannot frequently return in time for the dates scheduled and in that case we have to put in another boat.

Q. I notice there is only one sailing in 1910 for the new boat, the *Indian Prince?* A. The *Indian Prince* went out in December; she was then just launched; her first voyage across.

Q. And only two for the *Scottish Prince*, September 19th and December 23rd? A. It so appears.

Q. Where was it otherwise employed? A. As far as I know they are not employed in any other trade; excepting

Q. You would not want to say definitely it was not em- 3145
ployed in any other trade? A. Well, I am almost inclined to do so, because I am sure they are not employed in any other.

Q. Any of them? A. Those four boats were built for that trade. One or two occasionally went down to the River, but I don't think that year at all. They were only in the Brazil trade.

MR. KIRLIN: You mean the River Plate?

THE WITNESS: The River Plate I mean, yes.

3146

Q. Then up until 1910 the conference business so far as the Prince Line was concerned was served by the same boats that they had before the conference, was it not? A. As far as I recollect, yes.

Q. I did not ask you about the *Asiatic*? A. I don't think you spoke about the *Asiatic*.

Q. I think I did too. I asked you about the *Asiatic Prince* that had made one sailing October 31st. I ask you about that? A. I think so.

Q. How about that; that only appears to be one sailing? 3147
A. I could not explain to you why they did not make more sailings.

Q. Now any boat added in 1911 and 1912, the *Burmese Prince*, was that employed in the Brazil trade in that year; according to this schedule I don't find it? A. I suppose she was not then. You mean in 1911?

Q. In 1912? A. I suppose she did not go.

Q. It was not in 1911 either? A. No, I suppose not.

Q. As a matter of fact it never was employed in the Brazil trade, was it? A. I don't recollect, sir. The list here—— 3148

Q. This list does not indicate it? A. Well, then I suppose she did not go.

Q. Do you know where that boat was employed? A. No, sir. I do not recolect exactly.

Q Was it employed in the South African trade mostly? A. I think she was employed, or she may have been to the river. I do not recollect; we have so many of them and they can be changed around so quickly it is utterly impossible to keep them in my mind.

Q. Among the boats bought in 1912 is the *Austrian Prince;* was that employed in the Brazilian trade? A. The list will tell you. I haven't that in my mind.

3149 Q. According to this schedule, this Exhibit 212, I do not find that either. The *Austrian Prince*, the *Bulgarian Prince* or the *Hungarian Prince* were employed in the Brazilian trade? A. I don't think they were in the Brazilian trade. It doesn't appear to be in the list.

Q. Then you want to amend your statement to the effect that all of these steamers named in the list that you gave here were employed in the Brazil and River Plate; you want to except the *Burmese Prince*, the *Austrian Prince*, *Bulgarian Prince* and *Hungarian Prince*, don't you? A. I
3150 said distinctly it covered the berths as they are required.

Q. But as a matter of fact they were not employed, were they, in those? A. There is the list; they were employed; I don't carry it in my mind; it is impossible.

Q. I am calling your attention to the list offered Exhibit 212, and I find there is no entry showing either the *Burmese Prince*, *Austrian Prince*, *Bulgarian Prince* or *Hungarian Prince* had any sailings in—— A. Then I presume they did not go to Brazil.

Q. Weren't they employed largely in the South African trade as a matter of fact? A. No; mostly in the River
3151 Plate trade; more in the River Plate trade.

Q. Are you sure they were not employed in the other? A. I am not sure, no, sir.

Q. Now, among the other advantages which you claimed that inured to the benefit of the shippers by reason of this conference is that with reference to insurance, and you stated among other things that the underwriters would make more favorable terms by reason of this conference than they would without it; did I understand you to answer that way? A. Not by reason of the conference; by reason
3152 of the conference the Prince Line is enabled to furnish better steamers. If we did not have a regular service we could not furnish all these fine first class steamers that we are furnishing, and, consequently, the insurance is at the lowest, as I have been informed by the underwriters myself.

Q. Then what you mean is that it is not the fact directly that there was a conference that made the insurance rates more favorable, but due to the fact that by the conference you were able to have a better line of boats? A. Yes, that is it.

Q. And because you had a better line of boats you got a

more favorable rate? A. I wish to have added the idea 3153
that it enabled us to furnish boats which insured the lowest rate.

Q. Isn't the question of insurance fixed by the quality of boat regardless of where it is owned or how it is operated? A. Of course, it depends on the quality of the boat.

Q. The boats that you had in the trade prior to 1910 were a quality of boats that were abreast with the times, were they not? A. Abreast with the times, yes; but I don't think they were as good or high standard boats as our present boats are.

3154

Q. Of course, but you have already testified that there has been an advance in the building of boats, even including tramps in recent years? A. Yes.

Q. So that so far as insurance is concerned you got just as favorable rates during the competitive period in 1907 as you got on the same boats after 1907, didn't you? A. We always tried to get our boats——

Q. Can't you answer that in a way without a lengthy answer? A. Repeat the question again.

Q. (Question read.) A. Yes.

3155

Q. Among the other advantages which you claimed to inure to the benefit of the shipper is the regularity of sailings? A. Yes.

Q. How do you advertise your boats so that the shipper knows when a boat is to be on the berth here and when they sail? A. The dates we have established for sometime past are the 10th and the 25th of each month. If these dates fall on Sunday we try to despatch them the day before, on Saturday. It is owing to the——

Q. Wait a moment. You have not got quite my—your reasons are interesting enough, but how do you advertise; 3156
how does the shipper know your dates of sailing? A. We advertise in the various papers.

Q. In what papers do you advertise? A. We advertise in the Journal of Commerce, Maritime Register and in the Railway Guide in Chicago. That is where we change the dates, in those three papers.

Q. Do you always send your boats out on the day advertised for sailing, with the exception when the sailing dates fall on Sunday? A. We do not.

Q. In what instance do you not? A. When our steamers are detained in Brazil and do not leave there in time to

3157 reach New York to be discharged and loaded and get off on the schedule date; furthermore, sometimes we have to wait for the cargo. The cargo is booked and does not arrive in time and rather than send her with empty space we will detain the steamer a few days.

Q. It happened a number of times that you have held your boats because of reasons of you own, so that they did not sail for some number of days after their advertised date of sailing, although they were on the berth here? A. Yes.

3158 Q. That is not an uncommon thing, is it? A. No unfortunately not. There is so much detention in Brazil we cannot get back in time.

Q. Where would the advantage be to the shipper in such an irregularity as that? A. Well, we try to avoid the detention as much as we can. There is no advantage in that, but there is advantage in the regularity which at times we succed in maintaining very successfully.

Q. Do you mean by that that your regularity is more or less sporadic? A. As I have already said, it depends on
3159 the despatch in Brazil.

Q. You also testified you held them here frequently? A. Sometimes we hold them a few days for the cargo, yes.

Q. There are often times when you have more than one vessel of the conference lines on the berth on the same day, aren't there? A. Yes.

Q. Now, during the competitive period of 1907 weren't the boats of the various competing lines sailing quite as regularly as they were in 1908 and 1909? A. I don't recollect.

3160 Q. When you say that you would sometimes have to hold up the boats waiting for the cargo, what do you mean by that; cargo that was coming from places other than New York? A. Yes.

Q. To New York? A. Yes.

Q. To be transshipped? A. To be shipped here.

Q. Doesn't it often happen when your cargo is here, but that for reasons of your own you did not sail, outside of the lack of cargo? A. Not to my recollection.

Q. Now, Mr. Gerhard, you stated among the other advantages of the conference, or operating under conference is that if a vessel was lying on the berth awaiting cargo and another vessel was there, there would be an interfer-

ence with the loading of the other steamers; you remember 3161
that, don't you, and in that way that the regular despatch of the steamers would be interfered with; you remember that, don't you? A. Yes, I see that.

Q. It often happened, did it not, that more than one boat of the conference lines was on the berth at the same time after the conference was formed? A. Yes, sir.

Q. And it continually happens, does it not? A. Yes.

Q. How much more frequently was it in 1907, during the competitive period, that more than one boat of the various competitors was on the berth than afterwards? A. I 3162
could not answer that. I do not recollect it.

Q. Then, if that is a thing to be obviated the conference did not succeed in doing it, did it? A. The conference does succeed——

Q. Can't you answer that question yes or no? A. Repeat the question, please.

Q. (Question read.) A. To a large extent they did.

Q. But to a considerable extent it did not? A. I didn't say so. I said——

Q. I am asking you the question? A. No. 3163

Q. Among other advantages you say that it enables the lines to furnish regular and frequent communication with Brazil, thereby offering vessels to merchants to get their goods off promptly; was the communication to Brazil any more frequent after 1908 than during 1907? A. I do not recollect 1907. It is so long ago. I have no recollection about the sailings.

Q. You must have a general idea about what opportunities for communication were open during that competitive period? A. I beg to refer you to the list that I have 3164
already furnished you; that gives all the information on the subject.

Q. I suppose we will have to do that in more ways than one, Mr. Gerhard? A. I haven't it in my mind but the list is correct.

Q. I didn't ask you about that. Now, listen to me; are you able to state whether or not the opportunity for communication with the Brazilian ports was any greater after the conference was formed than it was before? A. Yes.

Q. In what particularity; in what sense? A. In the larger number of sailings despatched in later years.

Q. Do you mean to say that in 1908 there were any more

3165 sailings than in 1907 by the various boats that were in competition? A. There were more steamers despatched in 1908 than in 1907. The Prince Line despatched 19 boats in 1908 and 14 in 1907.

Q. You do not quite grasp my question. Were there more boats offered here for Brazilian sailings in 1908 than there were by all of the competitors in 1907 during this competitive era? A. I don't recollect those figures.

Q. Now, the conference did not enable you to furnish any better or faster steamers in 1908 and 1909 than you had in
3166 1907, did it? A. Will you allow me to look at that list?

MR. KIRLIN: I think if you are going to press that we will have to stop and let him add those all up.

A. (After examination of list.) This list shows what has been done.

Q. You haven't them all here? A. This list is complete It indicates all the ships. The list you have is complete.

Q. However, that may be, let us pass on to the next question. The conference did not enable you to furnish any
3167 faster or better ships in 1908 and 1909 than you had in 1907, did it? A. It enabled us to furnish better steamers as fast as they could be built, and they came out in 1910.

Q. And then in 1908 and 1909 practically the same steamers served the Brazilian trade as far as your line is concerned as it did in 1907, is that right? A. According to the list before you it will give you all the information on the subject.

Q. You know that, don't you? A. I haven't got it in my mind, no, sir; I have not.

3168 Q. You have already testified and your schedule shows you put on new steamers on until 1910, so I assume in 1908 and 1909 you were using the same boats? A. According to the list before you; it will give you the information desired.

Q. You would not say then—— A. I don't recollect it, sir.

Q. Now, among the other advantages you testified that it enabled the conference to regulate the rates by taking as the basis the European rates and by so doing placing the American merchants on as favorable basis in the Brazilian market as the European merchants? A. Yes.

Q. Then are we to infer from that that so far as the 3169
American trade is concerned the conference here did not fix the rates at all, but that the rates were entirely founded upon the European schedule? A. Except the American articles which do not appear in the European tariff.

Q. Otherwise they were effected entirely by the Europeans? A. Yes.

Q. And regulated by it? A. Yes.

Q. Now, was as far as rates are concerned, the American merchant in a less advantageous position during the competitive period than European merchants for the same 3170
trade? A. No, sir.

Q. No? A. No, sir.

Q. Do you know how many European ports there are that are serving to the Brazilian ports? A. Not definitely.

Q. Well, approximately? A. Approximately there is I think steamers despatched from Liverpool, Glasgow, Southampton, London, Hamburg, Antwerp, Rotterdam, and there are other ports no doubt which are not in my mind at present.

Q. Do you know whether or not the European rates to 3171
the Brazilian ports were the same for all those ports? A. As far as I know they are the same from all those ports. They work in conference in Europe.

Q. The actual mileage from, we will say, the North German ports, or from Holland, would be considerably greater than it would be from the English ports, would it not? A. I think there is some difference in distance, of course.

Q. Among the other advantages you speak of, you say that the shippers, that is to say the merchants, or the owners, or shippers of goods arriving from the west, always find steamers ready to take their goods under conference? 3172
A. Steamers or wharves ready to take their goods.

Q. Or wharves? A. Or wharves; I also said enabled the lines to keep large wharves ready to receive cargo.

Q. You were asked this question: "Distributing the shipments as they may arrive? A. Yes, just as they may require; they always find steamers ready to take their goods." A. I mean steamers or wharves.

Q. During the competitive period the same conditions existed, didn't they, in 1907? A. We were not in position to receive cargo on the wharf as we are now. We did not have the——

3173 Q. You were in as good condition as you were in 1908 and 1909, weren't you? A. We did not have the same amount of wharf space at our command that we have now.

Q. That is not quite my question? A. That is the answer to it.

Q. My question is you had as good wharfage facilities in 1907 during the competitive period as you had in 1908 and 1909? A. I say no; no, sir.

Q. Do you mean to say that in 1908 you had better wharfage facilities than you had in 1907? A. We had more
3174 wharf facilities in later years. It is impossible for me to state exactly 1907 or 1908.

Q. Isn't it the fact, Mr. Gerhard, that there was no increase in the size of the wharves to any great extent at least in 1908 or 1909, but in 1910, when the improvement in wharfage all over the harbor of New York 'an to be improved, isn't that right? A. The dates— ıot tell you those dates when we obtained more spac· possible to recollect that. We got more space ves, but we did not have the same amount of ommand
3175 to stow cargo there.

Q. Do you mean they enlarged the arves or the buildings on the wharves? A. No, there were other users of the wharves that were disposed of when we came in with a larger trade and needed more wharf accommodations.

Q. Do you mean to say that it was due to the conference lines that you were given larger or more space, also enlarged wharves? A. It was due to the increase of trade brought about by the regularity of service which the conference enabled us to furnish.

3176 Q. But in 1908 and 1909, according to your testimony you did not have any more sailings approximately than there were of all the competitors in 1907 and before 1907? A. I have repeatedly testified that 1908 was the worst year that I recollect, and our steamers went out of here often with half cargoes; I repeatedly stated that.

Q. That was after the conference? A. Yes.

Q. And how about 1909; did you have any more space in 1909 than you had in 1907 for your own line? A. I think we got more space on the dock, yes, as far as I recollect.

Q. Was it due to the conference or due to the fact that you had more business? A. Due to the fact that we had

more business, which was due to the conference, because 3177
it enabled us to get more cargo and more orders.

Q. But not due to the fact that there was a general increase of trade everywhere? A. It is a matter of opinion. I attribute it largely to the regular and increased facilities we were enabled to furnish as a result of the conference.

Q. And it is your opinion that it was not due to the conference alone? A. I don't say so, alone.

Q. Have you, since you knew that you were going to be a witness, have you made any comparison of the growth of business from 1906 down to the present time? A. Well, I 3178
have made up a statement here of how much more we carried, yes.

Q. Not only of your line, but of the general increase of business? A. No; generally I have not made any statement of other lines.

Q. Have you made any examination to know whether the Lloyd Brazileiro had increased their business? A. No, I have not.

Q. Among other things you said it enables you to hire large wharves; you wish to qualify what you said a moment 3179
ago, that you were given more space on the wharves, or what is the fact about it? A. It is an equal thing. We have larger wharf accommodation; it enables us to obtain larger wharf accommodation.

Q. How about the wharf accommodations of the other conference lines, have they all been increased too? A. I don't know, sir.

Q. Do you know whether or not there were as sufficient wharf accommodations for merchants to store their goods during 1907 or 1906 as there were in 1908 or 1909? A. I 3180
don't recollect it, sir.

Q. Among the other advantages you say that it enabled you to hire larger wharves and offer facilities to merchants to send their goods right to the wharf, even if steamers are not ready to receive them, thereby saving the expense for demurrage on lighters and cars? A. Yes.

Q. Do you mean to say that those facilities were not open to merchants in 1907 and 1906? A. Yes, I would say that.

Q. For no line? A. I am speaking of the Prince Line.

Q. What about the other lines? A. I don't know what the other lines were doing.

3181 Q. Then from this I take it that your knowledge with reference to the advantages of conference is confined to the business of the Prince Line? A. Yes; I let the other lines speak for themselves.

Q. And then this opinion which you have given with reference to the advantages to the merchants is one derived from your knowledge of your own line's business and not that of the other conference lines? A. Yes, of my own line's business.

Q. During this competitive period had not the needs and
3182 necessities of merchants here for what we call the small ports been adequately served by some of the competitors or all? A. I do not recollect, sir.

Q. Now, you, in answer to Mr. Kirlin's question, stated the cargo capacity in cubic feet of some of the old boats, and coming down to more recent boats showing an increase from 68,000 cubic feet to 400,000 cubic feet; you remember that, don't you? A. Yes, I——

Q. Well now, Mr. Gerhard, isn't it true that in practically all of the recent boats, boats that you say were built
3183 in the last four or five years, in all trades there has been an increase in the size, so that the carrying capacity had been greatly increased? A. I think so, yes.

Q. Regardless of where that trade is; that is a matter of general knowledge, isn't it? A. Yes, ships have increased in size.

Q. I understand, Mr. Gerhard, that you have testified heretofore that the making of the rates in any way was not done here by the conference agents excepting with those exceptions which you have mentioned? A. Yes.

3184 Q. Entirely done abroad? A. Yes.

Q. You were not consulted as to the cost of doing the business at any time, were you? A. No.

Q. And the actual cost of the owners in this business you have no personal knowledge of? A. No business knowledge, no, sir.

Q. You stated you had no complaints from merchants with regard to the services that had been offered? A. What page is that on?

Q. Page 1264; you remember that, don't you? A. (After examination of record.) Yes, I gave this testimony.

Q. You mean to say you had no complaints whatsoever? A. As far as I recollect we had no complaints.

Q. Either as to the way the goods were stowed, the way 3185
they were loaded originally, stowed or discharged? A. We had complaints sometimes about a little damage to a cargo which will always occur. My remarks do not apply to the discharge of cargo, but to the service rendered at this end.

Q. How about your business in 1907 and 1906; did you have some complaints then when you were not in conference? A. I do not recollect. It is too long ago.

Q. You stated that you had no complaints with regard to your rates excepting you say "sometimes merchants asking us to name a lower figure, which, of course, they are 3186
very apt to do," you remember that, don't you? A. Yes.

Q. Well, was that request for lower rates frequent? A. Not frequent, no, sir.

Q. Were those requests for lower rates made upon a class of merchandise in which your conference had any discretion at all? A. It was based generally on articles for which they received a cost and freight limit and, of course, merchants then tried to get a lower figure in order to execute their order.

Q. And did you frequently grant those? A. I do not 3187
recollect, sir.

Q. Knowing that their ability to execute the order would depend upon a cost and freight rate—— A. Yes.

Q. Did you make any attempt to meet their wishes? A. Sometimes we would telegraph to Europe and endeavor to get a reduction if we thought it advisable; other times we would not.

Q. Were these large shippers or small shippers? A. Oh, the ordinary shipper; large and small.

Q. Were these people who had any time contracts or 3188
people who did not have time contracts? A. I do not recollect. I don't have any special case in my mind; I spoke in a general way.

Q. Then, if you did grant their application for the reduced rate for any purpose you would always have to get the consent of the London conference? A. Yes.

Q. And if the consent was made it was not made upon any condition here, but by the will of the London conference? A. Yes.

Q. When an application by a shipper for a reduction of rate would be made would the request to the London con-

3189 ference be made by an agent of the line or by the New York conference? A. The New York conference.

Q. When you got such a request you would first consider it in the New York conference? A. Yes.

Q. Is that right? A. Yes.

Q. And then the conference would telegraph on? A. The conference would cable to London.

Q. And whether you would cable or not would first be determined here? A. Yes.

Q. You would first determine whether or not it ought to
3190 be granted before you would make any request about it? A. Yes.

Q. If you were satisfied it should not be granted you would determine that here? A. That we would decide here.

Q. When you cabled, of course, it was always with a recommendation? A. No, sir.

Q. Sometimes without any recommendation. A. We would simply state the case and let the principals judge for themselves.

Q. There were times, of course, when you did recom-
3191 mend it? A. I do not recollect it. We generally simply stated the case to the principals and let them decide.

Q. You mean state it by cable? A. By cable, yes.

Q. Would you cable in any event, whether you were unfavorably disposed to it here or not? A. I said we would not always cable.

Q. Sometimes there was a disagreement among the conferee agents here as to whether or not you should cable the London conference for permission? A. Yes.

Q. And then your cable would state the attitude of each
3192 one of the agents of the lines, wouldn't it? A. Well, when all three lines did not join in the cable it would be stated who sent the cable. The line that sent the cable—it would mention the line that sent the cable.

Q. That would only be in case of a disagreement here? A. In case of a disagreement between the three lines, yes.

Q. You always used a code word, didn't you? A. It was all done in code words, yes.

Q. Have you been able since last Thursday to give me a general idea of about the amount of freight carried by the conference lines? A. Not by the conference lines.

Q. By your own line? A. By the Prince Line.

Q. The paper that you hand me contains the year and

number of sailings and the tonnage for each year? A. Yes, sir. 3193

Q. And the totals? A. Tons carried.

MR. BALDWIN: I will read this into the record:

CARGO CARRIED BY PRINCE LINE STEAMERS.

YEAR	SAILINGS	TONNAGE
1907	14	41,056
1908	19	31,655
1909	12	38,212
1910	21	53,336
1911	24	65,694
1912	23	87,772
	113	317,725

3194

Q. I notice that from 1907 to 1912 the gross tonnage carried by the Prince Line was 317,725? A. Yes. 3195

Q. Tons I suppose that means? A. Yes, tons.

Q. To these Brazilian ports? A. To these Brazilian ports.

Q. Served by this conference? A. Yes, sir.

Q. I suppose the freight for all that tonnage was paid? A. Yes.

MR. SPOONER: That is, your proportion?

THE WITNESS: This is the Prince Line only.

3196

Q. I understand your commission is based upon the amount of tonnage or the value? A. Amount of freight.

Q. Then you get your 5 per cent. on this gross amount? A. We get the commission on the freight money.

Q. Are you able to state approximately how much that gross tonnage means in amount of freight actually paid here? A. No, sir.

Q. I suppose a good many hundred thousand dollars, isn't it? A. I don't know what it is; I couldn't tell you.

Q. It is over $100,000, isn't it? A. I suppose it is, yes.

Q. Mr. Gerhard, I show you here in the record, page 250

3197 of the Exhibit book, a letter, Exhibit 143, which is a letter from the Lamport & Holt Line to Busk & Jevons under date of July 25th, 1908; will you just read it? A. (After reading letter.) I have never seen this letter before and I don't know anything about it.

Q. You have read it, the letter, as I handed it to you? A. Yes, I read the letter.

Q. Do you remember that shortly after the conference was formed where there was a proposition that the Prince and the German Lines would be allowed to call at Savan-
3198 nah; do you recollect that circumstance? A. Yes, I recollect it, sir.

Q. It was agreed, was it not, that your two lines, the Prince and German Line, could serve that business outside of the pool? A. I don't recollect details. All I recollect is that we did send two or three steamers to Savannah.

Q. And the Lamport & Holt Line objected, didn't they? A. I don't think they objected.

Q. Didn't they object upon the ground that that business, if it was served by these two lines or either one of them,
3199 that it must be done so that whatever the earnings were they should be pooled and divided? A. I don't recollect that. I don't recollect what the objections were.

Q. Haven't you any recollection of that incident? A. No, sir, I do not. None whatever.

Q. You don't serve Savannah, do you? A. Not now, no, sir.

Q. Nor does the German Line? A. No, sir.

Q. And have not since about this date, have you? A. We have not since 1908. I don't think we have sent any south.

Q. Or any other port in the United States outside of
3200 New York? A. No other port in the United States.

Q. Mr. Gerhard, you have testified pretty generally with reference to your opinion as to the benefit growing out of conference operation? A. Yes.

Q. Among other things as to the regularity of sailings and all those things? A. Yes, sir.

Q. Now, for the purpose of arriving at that opinion of yours, what comparisons, if any, have you made with any competitive period? A. I have made no special comparison.

RE-CROSS EXAMINATION by Mr. Kirlin: 3201

Q. Mr. Gerhard, you were asked by Mr. Baldwin how a merchant would be hurt or whether he would be hurt at all if he received a cost and freight order for some commodity to be shipped at a future time and closed a contract on the basis of the freight ruling at the time the contract was made, and when he came to execute the order found that the freight rates had fallen; as a matter of fact, is business done that way? A. No, sir.

Q. How is the business done; why isn't that a fair enquiry in your judgment? A. As a matter of fact, the sale 3202
and shipment of staple articles like flour, kerosene, lumber, rosin and so forth is conducted as follows: If a merchant in Rio de Janeiro desires to buy 10,000 cases of kerosene for June shipment, he telegraphs to his correspondent or agent in New York, soliciting a firm offer to cover cost, freight and insurance. A prudent merchant does not speculate on the freight market, but gets an offer not only from the seller of the kerosene, but also from one of the steamship lines for freight room and rate, and submits this combined offer by cable to his correspondent, in Rio de 3203
Janeiro. When reply is received accepting the offer, he closes simultaneously the purchase of the kerosene, as also contract for freight, and, of course, he must pay the freight agreed upon. If, between the time of closing the contract and time of shipment, a decline takes place in the freight market, his competitor is in position to ship kerosene at a cheaper rate, which may arrive at Rio de Janeiro at the same time as the higher priced oil, thereby inflicting a loss on the purchaser of the first lot of kerosene, instead of making a profit as he expected to do at the time he sent the order to New York-- 3204

MR. BALDWIN: To that I object. I object to any particular incident. The question is how business is done generally; how it is done by particular incidents is not material for any purpose, and, furthermore, the whole line of this statement is immaterial, irrelevant and incompetent.

Q. Continue your answer. A. I can even quote an incident during a period of wild competition in the freight market, which shows more prominently the difficulties and disadvantages the merchants are laboring under, when the

3205 steamship lines are all competing with each other. One morning on 'change I was closing a lot of kerosene with one merchant at 16¢ per case and the merchant thought he was getting a great bargain. Within about 30 feet of me, stood the agent of another steamship line with another merchant, and closed a lot of kerosene at 12¢ per case. Now, it was very gratifying for the second merchant to close the trade, but very unfortunate for the first merchant, and most likely when the merchant in Rio de Janeiro desires to send another order to New York, he would give
3206 preference to the merchant who obtained the lowest rate of freight. It is such a state of fluctuation in the market which upsets business, and merchants hesitate to send orders when they are not sure, but what by waiting, they can do better.

Q. You have been engaged in this trade in South America how many years? A. I have been engaged in the South American trade since 1867.

Q. From your knowledge and experience can you say whether that is the uniform method in which contracts are made? A. As far as I know, it is the regular method of
3207 doing business, yes.

Q. Do the merchants come to you in your practice regularly for freight rates ahead as the basis of contracts? A. Yes.

Q. And that has been so throughout your experience, has it? A. Yes.

Q. And you give them firm offers? A. Good for a certain time.

Q. And if they close their business they also exercise their option and book their cargo with you in accordance
3208 with the rate quoted to them? A. Yes.

Q. You have been asked a good many questions by Mr. Baldwin of comparisons of business before 1907 and business during 1907, and between business during 1907 when the competition was good and 1908 after the conference was formed; as a matter of fact, is the business now in such condition as to volume that comparisons between 1906 and 1907 are fair comparisons to make?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent. The best evidence would be, if competent at all, statistics about the trade of 1906 and 1907 and the Court can draw its own inferences.

Q. What is your opinion about that? A. I don't think it 3209
is a fair comparison; it has changed very much since 1907.

Q. In 1907 your ships had 14 sailings and carried 41,056 tons of cargo; according to your testimony this morning while in 1912 you had 23 sailings which carried 87,732 tons? A. Yes.

Q. That implies an increase in the number of vessels and an increase in the size of the vessels as well as increase in the volume, a very large increase, more than doubled increase, in the amount of tonnage carried, and you say you have not any special knowledge about what your conferees 3210
have been doing; but do you know in a general way whether your steamers or the steamers of any of the lines have increased in size? A. They have all increased in size.

Q. And your table shows they have all increased in sailings? A. Yes, sir.

Q. That is Exhibit 212? A. Yes, sir.

Q. The total number of sailings to the Brazils, according to the statement, Exhibit 212, leaving out the Booth Line, which goes to North Brazil, appears to have increased from 64 in 1906 to 109 in 1912? A. Yes. 3211

Q. Did the increase in the volume of tonnage increase in larger proportion than the number of sailings all through the services; that is, did the ships of all the lines operating increase in size? A. Yes, I think they all increased in size.

MR. BALDWIN: My attention is called to the fact that those figures include the Lloyd Brazileiro and everything except the Booth Line.

MR. KIRLIN: Yes, it does not include the Booth Line, but includes the Lloyd Brazileiro.

3212

Q. Eliminating every other line relating to those ports, except the conference lines, this Exhibit 212 includes an increase in the sailings from 1907 of 47 to 67 in 1912? A. So I believe. I have not the figures before me.

Q. And the increase in the volume of cargo carried you say is very much greater than the increase of sailings owing to the increase in the size of boats? A. Yes.

Q. But the total of that you are not in position to give us? A. I am not in position to give you.

Q. Mr. Baldwin asked you at the last hearing whether you had consulted with merchants regarding the method

3213 of conference lines, and whether you learned from them that the system was satisfactory or not and you said that you had not consulted with them; do you wish to make any modification of that reply? A. I wish to correct that statement as I have forgotten that I did speak to a few merchants; they expressed entire satisfaction with the conference methods and showed me copies of letters that they had written to the Honorable Joshua W. Alexander, which I wish to read—

MR. BALDWIN: Wait a moment. I must object to
3214 copies of letters shown to him by agents without an opportunity on my part to examine him about them at all.

MR. KIRLIN: I think it proper that he should be permitted to correct his testimony in that regard, although he cannot read them if you object to it.

Q. You were asked by Mr. Baldwin if you had copies of letters merchants had written to Judge Alexander, and you said you had not, if I remember; do you wish to make
3215 a correction about that? A. I don't know whether Mr. Baldwin asked the question or whether I volunteered that I had seen letters; I don't remember that exactly.

Q. Of course, you cannot state what is in the letters, but you have seen copies? A. I have seen copies. I have them here and I should like an opportunity to read them. (Witness hands letters to Mr. Baldwin.)

MR. BALDWIN: These are not addressed to you. I asked letters addressed to you.

THE WITNESS: I don't recollect your asking
3216 about letters addressed to me. I spoke about Mr. Alexander and I said I had seen letters.

Q. You have produced three letters and shown them to Mr. Baldwin, have you? A. I have, sir.

Q. You would like to offer them in evidence? A. And I should like to offer them in evidence.

MR. BALDWIN: I object. The letters are not written to you and are not the originals; the circumstances under which and how they were procured I know nothing about.

Q. What are the circumstances under which they were procured? 3217

MR. BALDWIN: I mean to say the originals; he cannot know of his own knowledge.

THE WITNESS: The originals were—

MR. BALDWIN: Wait a moment.

Q. How did the letters come to be written to Judge Alexander? A. They were written in reply to a circular letter that Judge Alexander sent to the merchants inviting their opinion on the conference, on the work of the various 3218 conferences.

Q. You saw that letter, did you? A. I don't think I saw that letter.

Q. A circular letter? A. A circular letter sent to various merchants.

MR. BALDDWIN: I ask to have it all stricken out; it is secondary evidence.

MR. KIRLIN: I will ask to have these marked for identification.

Marked Defendants' Exhibits 4, 5 and 6 for iden- 3219 tification.

Q. The first of these letters, Defendants' Exhibit 4 for identification, appears to be signed by H. S. Henry & Sons? A. Yes.

Q. What is their standing as shippers? A. They are merchants in this city of long standing.

Q. Large shippers? A. Large shippers engaged in the South American trade.

Q. How about A. S. Lascelles & Company? A. Likewise. 3221

Q. The signers of Exhibit 5 for identification? A. Yes.

Q. And John Dunn Sons & Company, signers of Defendants' Exhibit 6 for identification? A. They are large merchants in the South American trade.

MR. BALDWIN: This is all subject to my objection?

MR. KIRLIN: Yes.

Q. Referring to the service to Natal; you were asked whether the Booth Line steamers did not continue to serve that port; how do the Booth Line steamers serving Natal compare in size and draught with the conference lines' steamers?

3221 MR. BALDWIN: Objected to as incompetent and irrelevant.

A. I have no definite knowledge on that subject. My impression is that they are small steamers.

MR. BALDWIN: Ask to have it stricken out as a mere impression.

Q. You testified that contracts were made to certain concessionaires in Brazil or located here, who were operating
3222 in Brazil, at lower than tariff rates; did the shipments that the concessionaires made ordinarily go on tariff rates? A. All the goods would go on tariff rates that were not specially contracted for.

Q. Yes, but these shipments that the concessionaires have to make are for parts of plants that are being installed? A. Parts of plants, yes.

Q. Manufacturing plants or power plants or railroad plants? A. Yes, sir.

Q. I understood you to say that those things did not come
3223 in general competition? A. In competition with the market or shipments of other merchants.

Q. That is, that there were not any considerable quantity of those going at tariff rates; they all went on special contract? A. On special contract.

Q. You were asked some questions about rates on case oil; is case oil one of the general staple products? A. Yes.

Q. Treated in shipping as a bulk commodity? A. An article which is shipped in large quantities.

Q. It is a heavy product, isn't it? A. You mean in
3224 weight?

Q. Yes? A. I don't know that it is. It is a bulky article as we call it; it goes in large quantities.

Q. Does every ship take or need a considerable quantity of it? A. Most every ship takes a large quantity of it.

Q. For stowage? A. It is useful in stowing with the other commodities it goes with; for making up the cargo; we have to take cheap bulk cargo to make up a cargo for these large ships.

Q. Does that account for the modified rate that is given on case oil under the contract? A. The rate on kerosene is largely influenced by the charter rate.

Q. Is it a commodity that goes in sufficient bulk to go in

full cargoes? A. The full cargoes of kerosene and, of 3225
course, our rates are very much influenced by the charter rates.

Q. That is, you make a rate sufficiently low on it to prevent its going in bulk cargoes under charter if you can do so? A. Yes.

Q. You have been asked about a lot of time contracts which, according to my recollection, are not in evidence, contracts to the Carbide Company, and Plummer and Thomsen—

MR. BALDWIN: They all have exhibit numbers on 3226
them.

THE WITNESS: The Barbour asphalt is and possibly it could—

Q. I may be wrong about some of them, but feel sure some of them are not; but, at all events, are all these quantity contracts, contracts for large quantity? A. As far as I recollect, they are. No, I don't think they are all quantity contracts. You mean specific contracts, Mr. Kirlin?

3227

Q. Either specific quantities or large quantities? A. Large quantities, yes.

Q. Quantities such as are not ordinarily booked on the day to day engagements? A. Yes; these contracts are frequently made to enable merchants to contract for regular shipments during the year; in Brazil they want to make sure of the freight rate for the year.

MR. BALDWIN: Ask to have that stricken out because he cannot possibly have personal knowledge of that.

3228

Q. That is what they told you? A. Yes, that is what they told us.

MR. BALDWIN: Objected to as immaterial and irrelevant; statements made by others.

Q. These statements are made to you in the ordinary course of business? A. Yes, ordinary course of business; expressing why they want a contract.

MR. BALDWIN: Same objection.

Q. You give consideration to the policy of granting these

3229 contracts on the faith of these statements made to you being true? A. Yes, we do in order to facilitate business.

Q. The number of large shippers with whom contracts are made is relatively small in comparison with the total number of shippers that you have mentioned, but how does the bulk of their shipments compare with the shipments of the ordinary commission merchant? A. These shipments of the contractors are very large and they go forward on most any steamer that loads for Brazil, I mean of the conference lines. Most any steamer carries a quantity of
3230 these goods forward.

Q. You have been asked some questions about different ships of the Prince Line that appear on these lists. Are the names of some of the steamers the same as those of smaller vessels that are owned by the company heretofore and were either abandoned, lost or sold? A. I think so. I think they have adopted the same names for the new boats as some of the old boats; that is my impression.

CROSS-EXAMINATION by Mr. Burlingham:

3231 Q. Mr. Gerhard, this pooling agreement, Exhibit 2, was only signed, of course, by the principals? A. Yes.

Q. And all matters relating to the pool were adjusted on the other side, weren't they? A. Yes, sir.

Q. But this agreement contains a clause for pooling of agents' commission, clause four; you remember that? A. Yes, I recollect it.

Q. If the pooling agreement were cancelled or they withdrew from it, it would carry that with it, I suppose?

MR. KIRLIN: Carry clause four with it?

3232

A. Yes, carry clause four with it.

Q. That pool, Exhibit 2, has not yet been adjusted on the other side, has it?

MR. BALDWIN: If he knows of his own knowledge, of course.

A. I don't know. I am under the impression that it is settled, the pooling agreement is settled.

Q. What do you base that on? A. On statements I have had from Mr. Knott that he has had payments from—

MR. BALDWIN: Of course, the Government con-

siders this all immaterial, and I make general ob- 3233
jection.

A. I am perfectly willing to have Mr. Baldwin let the whole thing be struck out, as it don't belong in this affair.

MR. BALDWIN: We will decide that.

Q. There is in the pooling agreement a provision for arbitration, is there not? A. I don't recollect the agreement.
Q. Article ten? A. Yes, according to that: there appears to be an arbitration agreement. 3234
Q. Isn't there a litigation pending between your firm and the firm of Busk & Daniels in regard to this very matter of pooling conditions?

MR. BALDWIN: Same objection.

A. There is not in that sense as you put it. Messrs. Busk & Daniels had commenced suit against me—
Q. Against your firm you mean? A. Against the firm questioning the return of commissions on rebates, old rebates which were paid many years ago, and I questioned 3235
the correctness of the claim and have requested him to give me proof that those rebates had actually been paid. Then I was quite willing to pay his claim. But I have reason to doubt the correctness of it. While I was freight agent for the Lamport & Holt Line, they would occasionally render me accounts for return of commissions on rebates paid which I had always paid promptly. After—
Q. That is hardly responsive as to whether there is litigation—

MR. BURLINGHAM: I move to strike it out as not 3236
responsive, and I ask whether there is litigation, yes or no? A. There is no litigation about pooling, no, but there is litigation; there is one dependent on the other. I have not finished my sentence there.

Q. Go ahead? A. (After hearing last answer read.) After I gave up the agency he sent me an account for commissions due for many years back which, if they actually were due, should have been rendered in the regular way during the time that I was agent; and having my doubts as to the correctness of these statements, I asked him for

3237 proof that the rebates had been paid, and this proof he has declined to furnish me.

MR. BALDWIN: Now I move to strike out the whole answer as not responsive whether there is any litigation pending, and if you have no objection, we will ask the stenographer to expunge it.

(The stenographer read the previous question as follows: "Isn't there a litigation pending between your firm and the firm of Busk & Daniels with regard to this very matter of pooling commissions?")

3238

Q. You say no, don't you? A. I would like to consult my lawyer.

Q. Mr. Gerhard, if you are wrong about that and there has been no final adjustment of the pool in Europe, then can you say that the matter of pooling commissions is at an end and finally determined here? You said a while ago that you thought the pooling agreement adjustment had been made in Europe, didn't you? A. Yes, sir.

Q. But that is mere information that you have received
3239 from Mr. Knott I believe? A. Yes.

Q. Now, I say if you are wrong about that, and if the pooling matter has not been finally adjusted in Europe, how can you say that Busk & Daniels owe you anything on commissions? A. On the statement of the secretary who has made up this statement. He has made up this statement and says that twenty-six hundred and odd dollars is due me.

Q. You have never brought suit for that? A. No, sir, we have not.

Q. And they have brought a suit against you for about
3240 $2,500? A. $2,200.

Q. $2,376.08, I believe it is, and you have not paid that, have you? A. No, sir, because I want proof that it is correct.

Q. I didn't ask your reason? A. That is what I brought out before. I want proof that the claim is correct. As a matter of fact he owes me more money now; he owes me something like $3,200, over $3,200 altogether.

MR. BURLINGHAM: Move to strike it out.

Q. For what? A. For another pooling commission. He owes me $3,200 against a claim of $2,300.

Q. But no suit brought by you? A. The matter is in the 3241
hands of my lawyer, and he is acting according to his best judgment.

RE-RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Gerhard, you have testified on your re-direct examination that you had at least, or more than six hundred customers, and you have testified that you did not consult any of them as to their views concerning the merits of conference methods of operating these steamers; you remember that, don't you? A. I corrected my testimony. 3242

Q. You corrected it this morning by saying that you had talked with two, is that right? A. Yes.

Q. Who are the two? A. I talked with S. S. Henry & Son as I recollect, and John Dunn Son & Company and Lascelles.

Q. Lascelles you say you talked with? A. As a matter of fact I did not personally talk with Lascelles; the letter was brought to me.

Q. I am not asking you anything about—now, Mr. Gerhard, you have got to be a bit responsive; I said talked, not 3243
letters? A. I did not talk to Lascelles.

Q. Did you talk with any person connected with John Dunn Sons & Company? A. Yes.

Q. Now, as a matter of fact they are really the New York branch of the firm of Juan & Jose Drysdale of Buenos Ayres, are they not? A. Yes.

Q. And they ship little or nothing from here to Brazil? A. Yes, as the letter states, they do not ship to Brazil.

Q. I didn't say anything about a letter; you know they don't ship to Brazil? A. I know they don't ship to Brazil, 3244
yes.

Q. So then they are not one of the shippers over the Brazilian line, I mean over your line for Brazilian business— A. They are not.

Q. That you had in mind? A. They are not.

Q. Now, does not Lascelles & Company ship almost entirely to the River Plate? A. No, sir, they are large shippers to Brazil.

Q. How often in a year do they ship? A. I think they are shipping every month.

Q. What do they ship? A. All kinds of goods; American products.

3245 Q. They represent do they not, merchants in other parts of the country and they simply arrange for the shipments here themselves? A. They are commission merchants; they get orders from Brazil.

Q. They have their own house in Brazil, haven't they? A. I don't know.

Q. Isn't it a fact that most all of their shipments from here are to themselves in Brazil? A. Not to my knowledge.

Q. Would you say that is not their method of doing business? A. I don't know that they have a house in Brazil.

3246 Q. They are the only two merchants that you have personally consulted? A. As far as I recollect, yes.

Q. Will you let me look at that document you had there that you read so extensively from as to the method of doing business. Now, you say that business here by merchants—I mean here in this country— A. Yes.

Q. With Brazil is not carried on on the cost and freight method? A. I say distinctly it is carried on on the cost and freight method. I say it is on the cost and freight; I say so distinctly.

3247 Q. Now, you have a great many articles on this tariff list that are sent from this country to Brazil, have you not? A. Yes.

Q. And you have mentioned in connection with your statement how merchants conduct business, staple articles like flour, kerosene, lumber and rosin? A. Yes.

Q. Now, who are the large flour shippers? A. Why, Holt & Company is one of the largest houses in New York.

Q. Who else? A. Most any of the commission merchants ship flour and get orders for it.

Q. There are a great number of them, aren't there? A.

3248 There are a great number of them.

Q. How do you know how they conduct their business? A. Simply from the experience I have with them. When they get an order they come to us and ask for an offer of freight room.

Q. What ones connected with Holt & Company ever came to you and said or made a statement to you that he had commitment in some way down there in advance of his making an application for rates? A. I didn't say he had. I don't think I said it there; I gave that as an example of how business is conducted here.

Q. You have stated that is the way the business is con-

ducted and you mentioned flour as one? A. Yes, one of 3249
those articles.

Q. How do you know that Holt & Company, as an example of a large shipper of flour, do their business in the method you have outlined here this morning; did they tell you that? A. They come to us for an offer of flour.

Q. Well, what else do they say to you? A. They don't say more than is necessary to get the offer of flour.

Q. Do they say to you among other things that they have received a telegram from their correspondent or agent? A. No, sir. 3250

Q. Or that they had sent to the shipper there a telegram? A. No, sir.

Q. Now, for instance, you say if a merchant in Rio Janeiro desires to buy 10,000 cases of kerosene for June shipment, he telegraphs to his correspondent or agent in New York soliciting a firm offer of cost, freight and insurance; you mean by that a definite offer? A. A definite offer.

Q. Now, when the reply is received accepting the offer he closes simultaneously the purchase of the kerosene as also a contract for freight, and, of course, he must pay the 3251
freight agreed upon? A. Yes.

Q. Now, you then had in mind when you testified as to how the receiver of the merchandise, the purchaser of the merchandise in Brazil, does his business? A. I have simply quoted the manner the business was done in New York; I gave that as an example. I have said as an example.

Q. No, you said this is the way the business is done? A. An illustration of the way the business is done.

Q. Do you mean to say that all the shippers do that? A. No, sir, other shipers may do some other way; I don't 3252
know.

Q. Will you say all the shippers in flour do business that way? A. No, sir.

Q. Will you say all the business in kerosene is done that way? A. I gave this as an illustration. I wanted to show —the way you speak, the quotation you gave, was not at all the the way business was done and I merely wanted to state here, give an illustration how the business was really done.

Q. My statement was to the effect that if a merchant here had made a commitment of some commodity to be de-

3253 livered in Brazil and he had quoted the price which would include the cost and freight, and then making it on the current freight rates here, but when he came to ship the commodity he found that the rate was lower how he could be hurt; now, you say that that is not the method of conducting business by merchants here? A. No, sir, no prudent merchant will gamble on freight; they deduct the freight in the market; it covers them on freight. No prudent merchant would do it.

Q. Do you mean to say that that ever happens, that the
3254 merchants do not make their commitments and that during the competition period when he came to ship the merchandise that the merchandise was lower; do you mean to say that did not happen? A. I say I stated distinctly no prudent merchant does it. There may be imprudent merchants that do it; no prudent merchant would do it.

Q. Are you speaking about the way merchants now conduct business when competition is eliminated, or are you speaking about the way merchants conducted business when there was competition? A. I do not state the business is done any different now than in former years; that
3255 has been the method for years back.

Q. Do you mean to say that the merchants during the competitive period did not make commitments basing the cost of freight on the then current prices or rates, and that when they came to ship the merchandise it did not often happen that the rate was less; do you mean to say that? A. I mean to say just what I do say.

Q. Answer it yes or no. A. No, I don't, no. I say so, no.

Q. It never happens? A. I don't say it never happened.
3256 I don't know everything that is happening in this world.

Q. I am asking you. A. You put a question that I cannot answer. I cannot stand this kind of business and I am talking facts here and I am being square and I hate to be badgered here.

Q. I didn't know you were entitled to any particular privilege. A. I am entitled to be treated as a gentleman.

Q. Haven't you been treated with some decency? A. I do not consider when you try to badger me; I don't make statements that nobody does it. I said distinctly "prudent merchants," and you insisted in putting more than I did, that I didn't put in.

Q. Now, Mr. Gerhard, since you have taken this stand I 3257
am going to ask you some more questions. A. All right, sir.

Q. And you are going to answer them. I think I have been pretty decent with you and I don't think you have any fault to find, but I do not propose to have you run away with me either. A. All right, sir.

Q. You have stated a course of business here; I am asking you a specific definite business, and if you don't know anything about it you can say so. Will you say upon the record that during the competitive period there were not 3258
instances, and many of them, where the merchants had made commitments with purchasers in Brazil based upon the current rates here for freight, and when they came to deliver the goods the freight rate was less? A. I don't know anything about it, sir.

Q. Then this statement of yours that you read this morning from a paper, is largely a hypothetical statement, isn't it? A. It is based on the method that is adopted here for doing business.

Q. Now, is this the way that the people who are engaged 3259
in the flour exportations do their business? A. I don't know.

Q. Is it the way the people who ship kerosene do their business? A. I think so.

Q. Do you think so or do you know so? A. I think so.

Q. Now, whom have you talked with that are engaged in the shipment of kerosene that has stated to you that that is the method of doing business? A. Nobody.

Q. Now, who in the lumber business have you talked with that has stated to you that that is their method of doing 3260
business? A. Nobody.

Q. And who in the resin business, Mr. Gerhard? A. Nobody.

Q. Did one merchant connected with any of these trades that you have mentioned ever in making an application for rates communicate to you anything about what their commitments were in Brazil when he asked for the rates, or for a deviation of rates? A. No merchant.

Q. You are not a merchant yourself, I believe? A. No, sir.

Q. So then this statement of yours is based upon what

3261 you think a prudent merchant ought to do? A. Yes, and is doing.

Q. Are all the merchants that are engaged in this business non-prudent merchants? A. I think most of them are very prudent merchants.

Q. And yet you don't know how they do their business from any statements made to you by them? A. No, sir.

Q. So then it must be a conjecture upon your part that that is the way they ought to do it? A. It is the result of many years of experience that I am speaking of.

3262 Q. We will assume that you have had many years of experience as a shipping agent; if you have had many years of experience that qualifies you to state how business is done it must be that, because you, yourself are a merchant or have got the concensus of the opinion of merchants as to how they do it? A. Yes.

Q. Now, mention any merchant from whom you ever got such expressions of opinion? A. That I stated is the result of many years coming in contact with merchants and I have no special merchant in mind.

3263 Q. Are you prepared to state that at the present time any of the merchants who handle this particular line of staple articles that you mentioned are actually doing business as you say there? A. No.

Q. Where do you get your information when you say that when the reply is received accepting the offer he closes simultaneously the purchaser of the kerosene and also the contract for freight and, of course, he must pay the freight agreed upon; where did you get your information as to the simultaneous method of closing those contracts and the

3264 freight? A. From the way I have been trading with merchants for many years past.

Q. Do they take you into their confidence and state to you whom they are dealing with? A. No, no, no; they don't take me into their confidence.

Q. They do not take you into their confidence at all, do they? A. No; they only come and ask for the offer of the freight and sometimes they will ask me to extend the time a little, because they have not got the price on the goods quite ready, and from that I infer they work the two together.

Q. That is simply an inference you draw? A. Yes, and the inference is pretty good as I give it to you there.

Q. You claim the inference is well drawn although no- 3265
body has ever stated to you how he conducts his business or what his commitments are? A. No, sir, no merchant told me just how he is doing business.

Q. And you are not a merchant yourself? A. No.

Q. How long has it been since you were in Brazil? A. In 1908 I was in Brazil.

Q. How long did you stay there? A. I returned in December; about three months.

Q. Did you talk with any of the merchants down there about how they were conducting their business? A. I did 3266
not ask how they conducted their business; I spoke to a good many merchants.

Q. My question was did you ask how they were conducting their business, or did they tell you how they were? A. They did not, no, sir.

Q. This particular incident that you say happened during a wild competition in the freight market and which you say more prominently shows the difficulties and disadvantages to the merchant and so forth, when did that occur? A. I think that occurred away back in 1903 or 1904. 3267

Q. Was this a Standard Oil shipper? A. I have forgotten now who the shippers were. It is so long ago I have forgotten the details, but the incident is very vivid in my mind.

Q. Was there keen competition back there in 1903? A. It shows very distinctly, when one man quotes 16 and the other 12.

Q. That may have been for a day or a month, I don't know; I am asking you the question? A. Yes, there was very keen competition.

Q. Plenty of boats here on the berth at that time to sup- 3268
ply the outgoing traffic? A. Yes.

Q. Merchants were not having any trouble about finding plenty of space offered at that time, were they? A. I don't think so, no, sir. I think they had plenty of space.

Q. Is it a fact that about all the freight shipped by these concessionaires that have been mentioned goes by contract either as to the quantity to be ultimately shipped or the time in which they are to ship it? A. I think it is all by contract.

Q. And that they are always at a less rate than the tariff rate, aren't they? A. I think so, yes.

Q. How does the charter rate affect the rate on kerosene?

3269 A. The charter rate, when a merchant can charter a steamer, is in a position to charter a steamer and can get a steamer at say 30c a case, and our rate is 34c or 35c a case, it stands to reason that if we want kerosene we will have to meet that competition, so that our rates are influenced very largely by the charter rates.

Q. Then what you mean by that is not from the actual fact that the charter rate offered on the berth, but from an apprehension that if a large shipper like the Standard Oil Company did not get the rate they wanted they would
3270 go out and charter? A. They would go out and charter. We can judge the market.

Q. So that it is not at all effected by the tramps that may be here? A. Well, it is effected by the tramps offering in the market.

Q. You mean not here? A. These ships are generally chartered before they come here.

Q. What merchant in New York outside of the Standard Oil Company is in a position to charter? A. For full cargoes of kerosene?

Q. Yes? A. I don't think any merchant outside of the
3271 Standard Oil.

Q. So then this keeping of a possible rate if they should charter, therefore, lowering the rate to their demand, inures solely to the benefit of the Standard Oil Company? A. I don't know that it is to the benefit of the Standard Oil Company.

Q. If they are the only ones that can afford to charter for full cargoes they are the only ones that get the benefit of that advantageous reduction, isn't it? A. Not necessarily.

3272 Q. Well, what others? A. There are a number of other shippers. Even we don't make the rate only— The rate fluctuates on kerosene for all these shippers; it keeps going up and down according to the tonnage as it offers, and if we put the rates down, of course all the shippers receive the same benefit.

Q. Do you mean to say that if the Standard Oil Company would make an offer to you of a large shipment and you had established, as you have testified before, a current rate for the kerosene, and their offer was less than that current rate, and you would give it because you knew they would charter outside if you did not, that you would give

to other shippers of kerosene the same rate that you gave 3273
the Standard, is that what you mean? A. I said that kerosene rates fluctuated, and, as the tariff showed you it shows you distinctly it fluctuates most every few days, and we change it and those rates as established then are given for all the merchants.

Q. You don't answer my question (Question read). A. I don't know how we do it, whether we give the exact rate or not.

Q. Is it a fact, Mr. Gerhard, that these concessions you make to the Standard Oil Company because it is a very 3274
large shipper is a rate that they themselves get the sole benefit of and that you do not quote to shippers of kerosene? A. Not always, no, sir.

Q. Mostly then? A. Well, mostly. I don't recollect just how we work that.

Q. But in any event only when they make a contract for kerosene? A. The shippers?

Q. Yes. A. Why, no, we give them the same reduced rates—

Q. You don't catch my question. If you have quoted a 3275
reduced rate from a current tariff to the Standard Oil Company, we will say at a given time, and there are any other shippers of kerosene at or about that time, would you give to those other shippers at that time the same rate that you would to the Standard Oil Company? A. I don't think that when we closed a contract for a large quantity of kerosene at a lower rate with the Standard Oil Company that that same rate would apply to small shipments. I am perfectly willing to answer your question only it is impossible to have all those things in my mind.

Q. Mr. Gerhard, I find that the number of sailings in 3276
1907 of all the lines other than the Lloyds numbered 47? A. Isn't that all the Prince Line alone you have there?

Q. No, the Prince Line 14, the Lamport & Holt Line 15, and the Hamburg Line 18 in 1907. (Question read.) In 1908 the conference sailings amounted to 62? A. Yes.

Q. In 1909 I find that the number of sailings of the conference had fallen off to 47? A. It so appears in 1909.

Q. So that there was a falling off in the number of sailings after the conference was formed, a year after, that is right, isn't it? A. Yes.

Q. Then again in 1910 they are increased again to 61,

3277 which is one less than the sailings in 1908, that is right, isn't it? A. Yes, in 1910, 61.

Q. Now, in 1911, the number of sailings are 62, or precisely what it was in 1908? A. So it appears.

Q. And the only advance in the number of sailings—material advance—from 1908 down to the present time was in the year 1912, when it increased to 67, five more sailings than there was in 1908; that is right, isn't it? A. Yes.

Q. Now, in 1907, the total tonnage according to your
3278 statement is 41,056 tons? A. You have the figures; I haven't got them before me. (After examining paper.) What is it?

Q. In 1907 the total tonnage was 41,050 tons? A. So it appears, yes.

Q. That is the total tonnage of your own line? A. Of the Prince Line steamers, yes.

Q. Now, in 1908, the first year of the conference, it had fallen off to 31,655 tons? A. Yes.

Q. Or a falling off of almost 10,000 tons? A. Yes.

3279 Q. In 1909 it progressed up to 38,212 tons? A. Yes.

Q. Or a little less than 3,000 tons less than it was in 1907, during this competitive period? A. Yes.

Q. This is your own tonnage. Then in 1910 is the first jump from what it was in 1907, isn't it? A. Yes.

Q. And then it goes up to 53,000? A. Yes.

Q. And in 1911, 65,000 and some odd tons, until in 1912 it went to the big jump? A. Yes.

Q. And that is up to 87,772? A. Yes.

Q. So, as a matter of fact for the first two years after
3280 the conference was formed the number of sailings was decreased and the amount of tonnage carried by your boats was less than it was in 1907 during the competitive era, is that right? A. Yes, but——

Q. Now—— A. The point is that in 1910 the new boats came in, which enabled them to do that.

Q. You know nothing about the amount of tonnage of the other conference boats since 1908, do you? A. No, sir; I do not keep track of it.

Q. Mr. Gerhard, referring back again to the method of doing business by merchants, you were asked by Mr. Kirlin with reference to case oil, that he would have to find out simultaneously the price and the rate? A. Yes.

Q. Now, I call your attention to the copy of a cable to 3281
the London conference of August 19th, 1908, and the reply—— A. Yes.

Q. Which is as follows: "We are considering advance case oil 20 cents but vary rate up and down maintaining 16 cent minimum as this may at the same time benefit Lloyds would like your approval." Answer: "Case oil we approve of the suggestion." Now, in the light of that cablegram how could the merchant have any such assurance or certainty about his contract when at this very time you were having this up and down and you were considering 3282
the question of the advance and the possible effect it would have upon the Lloyd? A. It shows the importance of the merchants to obtain a firm offer of freight costs which he accepts to Rio Janeiro.

Q. Was this in response to any application of any merchant? A. I don't know about it, because I was not in New York at the time. It only indicates very clearly the importance of getting a firm rate before he cabled.

Q. Well, now, assuming that the merchants had gotten from you simultaneously a 20 cent rate and at that very 3283
time you were considering the question of varying it either down or up, where does he come in on that kind of a transaction? A. If he takes the offer at 20 cents?

Q. Assuming that your rates were 20 cents on case oil? A. Yes.

Q. And he was about to make a commitment? A. Yes.

Q. And the rate quoted was 20 cents; now, you said that those rates were fluctuating up and down and you had discretion here to do it? A. Yes.

Q. Now, where would his assurance come in if the day 3284
you sent that cable where you had quoted him a 20 cent rate, he had closed with his party in Brazil at that rate and the next day you should drop it to 16? A. I consider I can answer an assumption on an assumption, an assumed case. I don't see how I can answer it any other way.

Q. You are assuming how it is necessary for your merchants to know simultaneously with the closing of the order with his purchaser, we will say in Brazil, and knowledge from you as to your rate, he is given assurance about that? A. He naturally has the assurance of the rate that he has a firm offer at.

Q. If you made a firm offer at 20 cents and he closed with

3285 his principal, or, I mean his purchaser, at 20 cents and you sent a cable to lower the rate—where does he get any particular advantage out of it, and where is the simultaneousness that helps him on it? A. You are putting the very case the opposite again to what I tried to bring out. Suppose that the rate we had quoted to him was 16 cents——

Q. Yes, and then went up? A. And we put up the rate to 20, then, naturally it would be his advantage that he got a firm offer at 16 cents.

Q. Now the reverse, where does he come in? A. The re-
3286 verse, the probability is that one of our regular customers we should simply reduce the rate, and say we had put our rate down and we will take your goods at the same reduced rate.

Q. But suppose you didn't do it? A. We did it.

Q. Did you always do it? A. I can't say always.

Q. Did you ever do it? A. Yes.

Q. Name an instance? A. No, sir, I cannot name an case; we frequently do that.

Q. Suppose he was not a regular customer, then what?
3287 A. I am not prepared to answer that supposition.

Q. Would he get the benefit of the fixed rate at 20 cents when it comes to filling his contract and he would find a 16 cent rate quoted, is that right? A. The probability is that we should give him the benefit of the 16 cent rate; give him the benefit of the reduction.

By Mr. Montgomery:

Q. You said, I think, that you had adopted for some years the 10th and 25th as the sailing dates? A. Yes.

Q. You meant for the Prince Lines steamers? A. For
3288 the Prince Line. I am only speaking of the Prince Line.

Q. Do you know what dates the Hamburg-American and the Hamburg-South American have adopted? A. As a matter of fact they are despatching the same dates.

Q. That you do? A. Yes.

Q. You mean they have adopted the 10th and 25th also? A. They had the 10th when the first came in and we had the 25th and Lamport & Holt was the 5th; the German Line 10th and our date the 25th and when business increased and we wanted to get another boat in, as we had a right to do, we sent it on the 10th so as to make it fair.